

EXHIBIT 3

1 WATERHOUSE - 10-19-21

2 IN THE UNITED STATES BANKRUPTCY COURT
3 FOR THE NORTHERN DISTRICT OF TEXAS
4 DALLAS DIVISION

5 -----
6 IN RE:

7 Chapter 11
8 HIGHLAND CAPITAL
9 MANAGEMENT, L.P., CASE NO.
10 19-34054-SGI11

11 Debtor.

12 -----
13 HIGHLAND CAPITAL MANAGEMENT, L.P.,

14 Plaintiff,

15 vs. Adversary
16 Proceeding No.
17 HIGHLAND CAPITAL MANAGEMENT 21-03000-SGI
18 FUND ADVISORS, L.P.; NEXPOINT
19 ADVISORS, L.P.; HIGHLAND
20 INCOME FUND; NEXPOINT
21 STRATEGIC OPPORTUNITIES FUND;
22 NEXPOINT CAPITAL, INC.; and
23 CLO HOLDCO, LTD.,

24 Defendants.
25 -----

17 REMOTE VIDEOTAPED DEPOSITION OF

18 FRANK WATERHOUSE

19 October 19, 2021

24 Reported by: Susan S. Klinger, RMR-CRR, CSR

25 Job No: 201195

<p>1 WATERHOUSE - 10-19-21</p> <p>2</p> <p>3</p> <p>4 October 19, 2021</p> <p>5 9:30 a.m.</p> <p>6</p> <p>7</p> <p>8</p> <p>9 Remote Deposition of FRANK WATERHOUSE,</p> <p>10 held before Susan S. Klinger, a Registered</p> <p>11 Merit Reporter and Certified Realtime Reporter</p> <p>12 of the State of Texas.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 2</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A P P E A R A N C E S:</p> <p>3 (All appearances via Zoom.)</p> <p>4 Attorneys for the Reorganized Highland Capital</p> <p>5 Management:</p> <p>6 John Morris, Esq.</p> <p>7 Hayley Winograd, Esq.</p> <p>8 PACHULSKI STANG ZIEHL & JONES</p> <p>9 780 Third Avenue</p> <p>10 New York, New York 10017</p> <p>11 Attorneys for the Witness:</p> <p>12 Debra Dandeneau, Esq.</p> <p>13 Michelle Hartmann, Esq.</p> <p>14 BAKER MCKENZIE</p> <p>15 1900 North Pearl Street</p> <p>16 Dallas, Texas 75201</p> <p>17 Attorneys for NexPoint Advisors, LP and</p> <p>18 Highland Capital Management Fund Advisors,</p> <p>19 L.P.:</p> <p>20 Davor Rukavina, Esq.</p> <p>21 An Nguyen, Esq.</p> <p>22 MUNSCH HARDT KOPF & HARDD</p> <p>23 500 North Akard Street</p> <p>24 Dallas, Texas 75201-6659</p> <p>25</p>
<p>1 WATERHOUSE - 10-19-21</p> <p>2 Attorneys for Jim Dondero, Nancy Dondero, HCRA,</p> <p>3 and HCMS:</p> <p>4 Deborah Deitsch-Perez, Esq.</p> <p>5 Michael Aigen, Esq.</p> <p>6 STINSON</p> <p>7 3102 Oak Lawn Avenue</p> <p>8 Dallas, Texas 75219</p> <p>9</p> <p>10 Attorneys for Dugaboy Investment Trust:</p> <p>11 Warren Horn, Esq.</p> <p>12 HELLER, DRAPER & HORN</p> <p>13 650 Poydras Street</p> <p>14 New Orleans, Louisiana 70130</p> <p>15</p> <p>16 Attorneys for Marc Kirschner as the trustee for</p> <p>17 the litigation SunTrust:</p> <p>18 Deborah Newman, Esq.</p> <p>19 QUINN EMANUEL URQUHART & SULLIVAN</p> <p>20 51 Madison Avenue</p> <p>21 New York, New York 10010</p> <p>22</p> <p>23 Also Present:</p> <p>24 Ms. La Asia Canty</p> <p>25</p>	<p>Page 4</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 I N D E X</p> <p>3</p> <p>4 WITNESS PAGE</p> <p>5 FRANK WATERHOUSE</p> <p>6 EXAMINATION BY MR. MORRIS 10</p> <p>7 EXAMINATION BY MR. RUKAVINA 256</p> <p>8 EXAMINATION BY MS. DEITSCH-PEREZ 352</p> <p>9 EXAMINATION BY MR. MORRIS 377</p> <p>10 EXAMINATION BY MR. RUKAVINA 387</p> <p>11 EXAMINATION BY MS. DEITSCH-PEREZ 393</p> <p>12</p> <p>13 E X H I B I T S</p> <p>14 No. Page</p> <p>15 Exhibit 2 NPA et al Amended Complaint 142</p> <p>16 Exhibit 33 6/3/19 Management 91</p> <p>17 Representation</p> <p>18 Exhibit 34 HCMLP Consolidated Financial 94</p> <p>19 Statements</p> <p>20 Exhibit 35 HCMFA Incumbency Certificate 151</p> <p>21 Exhibit 36 Email string re 15(c) 170</p> <p>22 Exhibit 39 HCMLP Operating Results 2/18 226</p> <p>23 Exhibit 40 Summary of Assets and 236</p> <p>24 Liabilities</p> <p>25 Exhibit 41 12/19 Monthly Operating Report 258</p>
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<p>Page 6</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Exhibit 45 HCMFA Consolidated Financial 135</p> <p>3 Statements</p> <p>4 Exhibit 46 NexPoint 2019 Audited 218</p> <p>5 Financials</p> <p>6</p> <p>7 Exhibit A1 Emails 11/25 328</p> <p>8 Exhibit A2 Emails 12/31 338</p> <p>9 Exhibit A6 Emails 1/12 341</p> <p>10 Exhibit A7 Promissory Notes 297</p> <p>11 Exhibit A9 Email, 8/31 307</p> <p>12 Exhibit A10 Acknowledgment from HCMLP 302</p> <p>13 Exhibit A11 HCMLP Schedule 71A 309</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 7</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 P R O C E E D I N G S</p> <p>3 VIDEOGRAPHER: Good morning,</p> <p>4 Counselors. My name is Scott Hatch. I'm a</p> <p>5 certified legal videographer in association</p> <p>6 with TSG Reporting, Inc.</p> <p>7 Due to the severity of COVID-19 and</p> <p>8 following the practice of social</p> <p>9 distancing, I will not be in the same room</p> <p>10 with the witness. Instead, I will record</p> <p>11 this videotaped deposition remotely. The</p> <p>12 reporter, Susan Klinger, also will not be</p> <p>13 in the same room and will swear the witness</p> <p>14 remotely.</p> <p>15 Do all parties stipulate to the</p> <p>16 validity of this video recording and remote</p> <p>17 swearing, and that it will be admissible in</p> <p>18 the courtroom as if it had been taken</p> <p>19 following Rule 30 of the Federal Rules of</p> <p>20 Civil Procedures and the state's rules</p> <p>21 where this case is pending?</p> <p>22 MR. HORN: Yes.</p> <p>23 MS. DANDENEAU: Yes.</p> <p>24 MR. MORRIS: Yes. John Morris. I</p> <p>25 would just try to do a negative notice</p>
<p>Page 8</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 here, as we did yesterday. If anybody has</p> <p>3 a problem with what was just stated, can</p> <p>4 you state your objection now?</p> <p>5 Okay. No response, so everybody</p> <p>6 accepts the stipulation and the instruction</p> <p>7 that was just given.</p> <p>8 VIDEOGRAPHER: Thank you. This is</p> <p>9 the start of media labeled Number 1 of the</p> <p>10 video recorded deposition of Frank</p> <p>11 Waterhouse In Re: Highland Capital</p> <p>12 Management, L.P., in the United States</p> <p>13 Bankruptcy Court for the Northern District</p> <p>14 of Texas, Dallas Division, Case Number</p> <p>15 21-03000-SGI.</p> <p>16 This deposition is being held via</p> <p>17 video conference with participants</p> <p>18 appearing remotely due to COVID-19</p> <p>19 restrictions on Tuesday, October 19th, 2021</p> <p>20 at approximately 9:32 a.m. My name is</p> <p>21 Scott Hatch, legal video specialist with</p> <p>22 TSG Reporting, Inc. headquartered at 228</p> <p>23 East 45th Street, New York, New York. The</p> <p>24 court reporter is Susan Klinger in</p> <p>25 association with TSG Reporting.</p>	<p>Page 9</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Counsel, please introduce</p> <p>3 yourselves.</p> <p>4 MR. MORRIS: John Morris, Pachulski</p> <p>5 Stang Ziehl & Jones for the reorganized</p> <p>6 Highland Capital Management, L.P., the</p> <p>7 plaintiff in these actions.</p> <p>8 MS. DANDENEAU: Deborah Dandeneau</p> <p>9 from Baker McKenzie. My partner, Michelle</p> <p>10 Hartmann, is also in the room with me,</p> <p>11 representing Frank Waterhouse individually.</p> <p>12 MS. DEITSCH-PEREZ: Deborah</p> <p>13 Deitsch-Perez from Stinson, LLP,</p> <p>14 representing Jim Dondero, Nancy Dondero,</p> <p>15 HCRA, and HCMS.</p> <p>16 MR. HORN: Warren Horn with Heller,</p> <p>17 Draper & Horn in New Orleans representing</p> <p>18 Dugaboy Investment Trust.</p> <p>19 MR. RUKAVINA: Davor Rukavina with</p> <p>20 Munsch Hardt Kopf & Harr in Dallas</p> <p>21 representing NexPoint Advisors, LP and</p> <p>22 Highland Capital Management Fund Advisors,</p> <p>23 L.P.</p> <p>24 MR. AIGEN: Michael Aigen from</p> <p>25 Stinson, and I represent the same parties</p>

<p style="text-align: right;">Page 10</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 as Deborah Deitsch-Perez.</p> <p>3 MS. NEWMAN: This is Deborah Newman</p> <p>4 from Quinn Emanuel. We represent the</p> <p>5 litigation -- Marc Kirschner as the trustee</p> <p>6 for the litigation SunTrust.</p> <p>7 MR. MORRIS: I think that is</p> <p>8 everybody.</p> <p>9 VIDEOGRAPHER: Thank you. Will the</p> <p>10 court reporter please swear in the witness.</p> <p>11 FRANK WATERHOUSE,</p> <p>12 having been first duly sworn, testified as</p> <p>13 follows:</p> <p>14 EXAMINATION</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Please state your name for the</p> <p>17 record.</p> <p>18 A. My name is Frank Waterhouse.</p> <p>19 Q. Good morning, Mr. Waterhouse. I'm</p> <p>20 John Morris, as you know, from Pachulski Stang</p> <p>21 Ziehl & Jones. You understand that my firm and</p> <p>22 I represent Highland Capital Management, L.P.;</p> <p>23 is that right?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And do you understand that</p>	<p style="text-align: right;">Page 11</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 we're here today for your deposition in your</p> <p>3 individual capacity?</p> <p>4 A. Yes.</p> <p>5 Q. Did you review and -- did you</p> <p>6 receive and review a subpoena that Highland</p> <p>7 Capital Management, L.P., served upon you?</p> <p>8 A. Yes.</p> <p>9 Q. You have been deposed before; right?</p> <p>10 A. Yes.</p> <p>11 Q. How many times have you been</p> <p>12 deposed?</p> <p>13 A. About three or four times.</p> <p>14 Q. Okay. And I defended you in one</p> <p>15 deposition; isn't that right?</p> <p>16 A. That is correct.</p> <p>17 Q. So the general ground rules for this</p> <p>18 deposition are largely the same as the</p> <p>19 depositions you have given before. And that is</p> <p>20 I will ask you a series of questions, and it is</p> <p>21 important that you allow me to finish my</p> <p>22 question before you begin your answer; is that</p> <p>23 fair?</p> <p>24 A. Yes.</p> <p>25 Q. And it is important that I allow you</p>
<p style="text-align: right;">Page 12</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 to finish your answers before I begin a</p> <p>3 question, but if I fail to do that, will you</p> <p>4 let me know?</p> <p>5 A. I can certainly do that.</p> <p>6 Q. Okay. Do you understand that this</p> <p>7 deposition is being videotaped?</p> <p>8 A. Yes.</p> <p>9 Q. You understand that I may seek to</p> <p>10 use portions of the videotape in a court of</p> <p>11 law?</p> <p>12 A. I did not know that, until you just</p> <p>13 said that.</p> <p>14 Q. Okay. And you are aware of that now</p> <p>15 before the deposition begins substantively; is</p> <p>16 that right?</p> <p>17 A. Yes.</p> <p>18 Q. So unlike I think the other</p> <p>19 depositions that you have given, this one is</p> <p>20 being given remotely. So that presents some</p> <p>21 unique challenges, at least as compared to a</p> <p>22 deposition that is taken in-person.</p> <p>23 From time to time we're going to put</p> <p>24 documents up on the screen, Mr. Waterhouse.</p> <p>25 And it is important that I give you the</p>	<p style="text-align: right;">Page 13</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 opportunity to review any portion of the</p> <p>3 document that you think you need in order to</p> <p>4 fully and completely answer the question.</p> <p>5 So I would ask you to let me know if</p> <p>6 there is a portion of a document that you need</p> <p>7 to see in order to fully and completely answer</p> <p>8 the question. Can you do that for me?</p> <p>9 A. Yes.</p> <p>10 MS. DANDENEAU: Mr. Morris, I would</p> <p>11 just note that we do have hard copies of</p> <p>12 the documents that you sent, so if you can</p> <p>13 just refer to the exhibit number as</p> <p>14 reflected in the documents that you sent,</p> <p>15 Mr. Waterhouse will be able to look at the</p> <p>16 hard copies of those documents.</p> <p>17 MR. MORRIS: I appreciate that,</p> <p>18 and -- and I will encourage him to do so.</p> <p>19 There will be other documents that we did</p> <p>20 not send to you that we'll be using today</p> <p>21 though.</p> <p>22 Q. Okay. With that as background, if</p> <p>23 there is anything that I ask you, sir, that you</p> <p>24 don't understand, will you let me know?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 14</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Are you currently employed?</p> <p>3 A. Yes.</p> <p>4 Q. By whom?</p> <p>5 A. The Skyview Group.</p> <p>6 Q. When did you become employed by the</p> <p>7 Skyview Group?</p> <p>8 A. I believe March 1st of 2021.</p> <p>9 Q. Do you have a title at Skyview?</p> <p>10 A. Yes.</p> <p>11 Q. What is your title?</p> <p>12 A. My title is chief financial officer.</p> <p>13 Q. Do you report to anybody in your</p> <p>14 role as CFO?</p> <p>15 A. I don't, no.</p> <p>16 Q. No. Is there a president or a CEO</p> <p>17 of Skyview?</p> <p>18 A. Yes.</p> <p>19 Q. Who is that?</p> <p>20 A. That is Scott Ellington.</p> <p>21 Q. But you don't report to</p> <p>22 Mr. Ellington; is that right?</p> <p>23 A. I don't think so.</p> <p>24 Q. Does Skyview Group --</p> <p>25 MS. DANDENEAU: Excuse me, we --</p>	<p style="text-align: right;">Page 15</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I -- I -- I might. I just -- I</p> <p>3 don't recall.</p> <p>4 Q. Okay. Does Skyview Group provide</p> <p>5 any services to any entity directly or</p> <p>6 indirectly owned or controlled by Jim Dondero?</p> <p>7 A. Yes.</p> <p>8 Q. Can you name -- is that pursuant to</p> <p>9 written contracts?</p> <p>10 A. Yes.</p> <p>11 Q. And do you know how many contracts</p> <p>12 exist?</p> <p>13 A. Approximately six or so.</p> <p>14 Q. And is the Skyview Group made up of</p> <p>15 individuals who were formerly employees of</p> <p>16 Highland Capital Management, L.P.?</p> <p>17 A. No.</p> <p>18 Q. Do you know how many -- how many --</p> <p>19 how many employees does Skyview have?</p> <p>20 A. Approximately 35.</p> <p>21 Q. And can you tell me how many of</p> <p>22 those 35 are former officers, directors, or</p> <p>23 employees of Highland Capital Management, L.P.?</p> <p>24 A. I don't know the exact number.</p> <p>25 Q. Is it more than 20?</p>
<p style="text-align: right;">Page 16</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. Is it more than 30?</p> <p>4 A. I don't know.</p> <p>5 Q. Can you tell me what portion of</p> <p>6 Skyview -- Skyview's revenue is derived from</p> <p>7 entities that are directly or indirectly owned</p> <p>8 or controlled by Jim Dondero?</p> <p>9 MS. DANDENEAU: Mr. Morris, I mean,</p> <p>10 you called Mr. Waterhouse here individually</p> <p>11 for purposes of his testimony in connection</p> <p>12 with the noticed litigation. I have given</p> <p>13 you some leeway to ask him some background</p> <p>14 information about Skyview Group, but this</p> <p>15 is not a substitute for a deposition in</p> <p>16 connection with any other pending disputes</p> <p>17 that exist. And -- and we agreed to accept</p> <p>18 the subpoena on the basis of he -- this is</p> <p>19 testimony that he is giving in connection</p> <p>20 with the noticed litigation.</p> <p>21 I really think that you are now</p> <p>22 going a little bit far afield from the</p> <p>23 purpose of this deposition.</p> <p>24 MR. MORRIS: Okay. It is -- I'm not</p> <p>25 intending to use these -- the answers to</p>	<p style="text-align: right;">Page 17</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 these questions for any purpose other than</p> <p>3 this litigation. I think you understand</p> <p>4 fully why I'm asking the questions, and I</p> <p>5 just have a couple more, if you will bear</p> <p>6 with me.</p> <p>7 MS. DANDENEAU: Okay.</p> <p>8 MS. DEITSCH-PEREZ: Can we have an</p> <p>9 agreement that an objection by one is an</p> <p>10 objection for any other party here?</p> <p>11 MR. MORRIS: Sure. I would -- I</p> <p>12 would encourage that, sure.</p> <p>13 MS. DEITSCH-PEREZ: Thank you.</p> <p>14 MR. MORRIS: It can't be sustained</p> <p>15 or overruled more than one time, so...</p> <p>16 Q. Mr. Waterhouse, can you answer my</p> <p>17 question, please.</p> <p>18 MS. DANDENEAU: Do you want to</p> <p>19 repeat it, Mr. Morris, for his benefit?</p> <p>20 MR. MORRIS: Sure.</p> <p>21 Q. Can you -- can you tell me the</p> <p>22 approximate portion of Skyview's revenue that</p> <p>23 is derived from entities that are directly or</p> <p>24 indirectly owned or controlled by Mr. Dondero?</p> <p>25 A. I don't know the exact number.</p>

<p style="text-align: right;">Page 18</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Is it more than 75 percent?</p> <p>3 A. Yes.</p> <p>4 Q. Is it more than 90 percent?</p> <p>5 A. I don't know.</p> <p>6 Q. Okay. Can I refer to Highland</p> <p>7 Capital Management, L.P., as Highland?</p> <p>8 A. Yes.</p> <p>9 Q. All right. And you previously</p> <p>10 served as Highland's CFO; correct?</p> <p>11 A. Yes.</p> <p>12 Q. When did you join Highland?</p> <p>13 A. I don't recall the exact date.</p> <p>14 Q. Can you tell me what year?</p> <p>15 A. 2006.</p> <p>16 Q. When did you -- in what year did you</p> <p>17 become Highland's CFO?</p> <p>18 A. I don't recall the exact date.</p> <p>19 Q. I'm not asking you for the exact</p> <p>20 date. I'm asking you if you recall the year in</p> <p>21 which you were appointed CFO.</p> <p>22 A. I don't recall the exact year.</p> <p>23 Q. Can you tell me which years it is</p> <p>24 possible that you were appointed to CFO of</p> <p>25 Highland?</p>	<p style="text-align: right;">Page 19</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. 2011 or 2012.</p> <p>3 Q. Did you serve as Highland's CFO on a</p> <p>4 continuous basis from in or around 2011 or 2012</p> <p>5 until early 2021?</p> <p>6 A. Yes.</p> <p>7 Q. During that entire time you reported</p> <p>8 directly to Jim Dondero; correct?</p> <p>9 A. I -- I don't know.</p> <p>10 Q. Is there anybody else you reported</p> <p>11 to -- withdrawn.</p> <p>12 Did you report to Mr. Dondero for</p> <p>13 some portion of the time that you served as</p> <p>14 CFO?</p> <p>15 A. Yes.</p> <p>16 Q. Is there a portion of time that you</p> <p>17 don't recall who you reported to?</p> <p>18 A. Yes.</p> <p>19 Q. What portion of time do you have in</p> <p>20 your mind when you can't recall who you</p> <p>21 reported to?</p> <p>22 A. From the 2011 to -- for</p> <p>23 approximately a year or two.</p> <p>24 Q. Okay. So is it fair to say that you</p> <p>25 reported to Mr. Dondero in your capacity as CFO</p>
<p style="text-align: right;">Page 20</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 from at least 2014 until the time you left</p> <p>3 Highland?</p> <p>4 MS. DANDENEAU: Objection to form.</p> <p>5 A. I don't want to speculate the exact</p> <p>6 or what year that changed or -- so I would like</p> <p>7 to stick with my testimony.</p> <p>8 Q. Can you recall when you began</p> <p>9 reporting to Mr. Dondero?</p> <p>10 A. I don't recall.</p> <p>11 Q. Can you -- can you give me an</p> <p>12 estimate of what year you think you might have</p> <p>13 began reporting to Mr. Dondero?</p> <p>14 A. I will go back to my prior</p> <p>15 testimony.</p> <p>16 Q. Okay. There is no -- you have no</p> <p>17 ability to tell me when you began reporting to</p> <p>18 Mr. Dondero.</p> <p>19 Do I have that right?</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 A. I don't recall.</p> <p>22 Q. Okay. Do you recall who you might</p> <p>23 have reported to before you began reporting to</p> <p>24 Mr. Dondero?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 21</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Who might you have reported to in</p> <p>3 your capacity as CFO before you started</p> <p>4 reporting to Mr. Dondero?</p> <p>5 A. That would have been Patrick Boyce.</p> <p>6 Q. Are you aware that Highland filed</p> <p>7 for bankruptcy on October 19th, 2019?</p> <p>8 A. Yes.</p> <p>9 Q. And we refer to that as the petition</p> <p>10 date?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Do you hold any professional</p> <p>13 licenses, sir?</p> <p>14 A. Yes.</p> <p>15 Q. Can you tell me what professional</p> <p>16 licenses you hold?</p> <p>17 A. I'm a certified public accountant.</p> <p>18 Q. Okay. Anything else?</p> <p>19 A. No.</p> <p>20 Q. Do you have any other professional</p> <p>21 licenses or certificates?</p> <p>22 A. When you say "professional license,"</p> <p>23 that is not education?</p> <p>24 Q. Tell me -- sure. Anything other</p> <p>25 than a driver's license.</p>

<p style="text-align: right;">Page 22</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Do you have any other license or</p> <p>3 certificate or certification?</p> <p>4 A. Are you asking, like, where I went</p> <p>5 to school and the --</p> <p>6 Q. I am not. I am not. I didn't say</p> <p>7 education. I didn't ask about degrees.</p> <p>8 Do you know what a license is?</p> <p>9 A. Well, yeah, I mean, a license is</p> <p>10 something you get after you receive a certain</p> <p>11 level of proficiency.</p> <p>12 Q. Do you have any licenses or</p> <p>13 certifications other than your CPA?</p> <p>14 MS. DANDENEAU: Objection, form.</p> <p>15 I assume you mean professional</p> <p>16 licenses, Mr. Morris; correct?</p> <p>17 Q. Can you answer my question, sir?</p> <p>18 A. Mr. Morris, I'm thinking. I</p> <p>19 don't -- I don't think I have any others.</p> <p>20 Q. Are you familiar with an entity</p> <p>21 called Highland Capital Management Fund</p> <p>22 Advisors?</p> <p>23 A. Yes.</p> <p>24 Q. Were you ever -- can we refer to</p> <p>25 that entity as HCMFA?</p>	<p style="text-align: right;">Page 23</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. Were you ever employed by HCMFA?</p> <p>4 A. Not that I recall.</p> <p>5 Q. Were you ever -- did you ever hold</p> <p>6 the title of an officer or director of HCMFA?</p> <p>7 A. Yes.</p> <p>8 Q. What title did you hold?</p> <p>9 A. Treasurer.</p> <p>10 Q. When did you become the treasurer of</p> <p>11 HCMFA?</p> <p>12 A. I don't recall.</p> <p>13 Q. Can you tell me the year?</p> <p>14 A. I don't -- I don't know the year.</p> <p>15 Q. Can you approximate the year in</p> <p>16 which you became the treasurer of HCMFA?</p> <p>17 A. I don't know.</p> <p>18 Q. Can you tell me if it was before or</p> <p>19 after 2016?</p> <p>20 A. I don't recall.</p> <p>21 Q. Are you still the -- do you know if</p> <p>22 you're still the treasurer of HCMFA today?</p> <p>23 A. Today, I am the acting treasurer for</p> <p>24 HCMFA.</p> <p>25 Q. Is there a distinction between</p>
<p style="text-align: right;">Page 24</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 treasurer and acting treasurer?</p> <p>3 A. I said "acting treasurer" as I am an</p> <p>4 employee of Skyview, as you previously</p> <p>5 stated -- or asked.</p> <p>6 Q. But you are the treasurer of HCMFA</p> <p>7 today; correct?</p> <p>8 A. I am -- I am the acting treasurer</p> <p>9 for HCMFA.</p> <p>10 Q. How did you become the treasurer of</p> <p>11 HCMFA?</p> <p>12 A. Are you asking how I became the</p> <p>13 treasurer of HCMFA today?</p> <p>14 Q. How did you become appointed to</p> <p>15 serve as the treasurer of HCMFA?</p> <p>16 A. Well, in -- in -- in what time</p> <p>17 capacity?</p> <p>18 Q. The first time that you were</p> <p>19 appointed.</p> <p>20 A. First time. I believe I was asked</p> <p>21 to serve as treasurer for HCMFA the first time.</p> <p>22 Q. By who? Who asked you to do that?</p> <p>23 A. I don't recall.</p> <p>24 Q. Is there anything that would refresh</p> <p>25 your recollection as to who appointed you as</p>	<p style="text-align: right;">Page 25</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 the treasurer of CF- -- HCMFA for the first</p> <p>3 time?</p> <p>4 A. I don't -- I mean, there would be</p> <p>5 some documents, some legal documents. I don't</p> <p>6 know where those are.</p> <p>7 Q. How many times have you been</p> <p>8 appointed the treasurer of HCMFA?</p> <p>9 A. I don't know.</p> <p>10 Q. Was it more than once?</p> <p>11 A. I don't know.</p> <p>12 Q. Can you tell me any period of time</p> <p>13 since 2016 that you did not hold the title of</p> <p>14 treasurer of HCMFA?</p> <p>15 MS. DANDENEAU: Objection to form.</p> <p>16 A. I don't recall.</p> <p>17 Q. What are your duties and</p> <p>18 responsibilities as the treasurer of HCMFA?</p> <p>19 A. My duties are to do the best job</p> <p>20 that I can as the -- as an accountant and</p> <p>21 finance guy.</p> <p>22 Q. What specific duties and</p> <p>23 responsibilities do you have as the treasurer</p> <p>24 of HCMFA?</p> <p>25 A. My duties are to do the best job</p>

<p>Page 26</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 that I can as the accounting and finance person</p> <p>3 for HCMFA.</p> <p>4 Q. As the accounting and finance person</p> <p>5 for HCMFA, do you have any particular areas of</p> <p>6 responsibility?</p> <p>7 A. Yeah, it is to manage the accounting</p> <p>8 and finance function for HCMFA.</p> <p>9 Q. Would that include -- do you have</p> <p>10 responsibility for overseeing HCMFA's annual</p> <p>11 audit?</p> <p>12 A. Can I please elaborate on my prior</p> <p>13 question?</p> <p>14 Q. Of course. You -- you are giving</p> <p>15 answers. I'm asking questions.</p> <p>16 A. Okay. Yes, so the -- it -- like I</p> <p>17 said, it is to manage the accounting finance</p> <p>18 aspect, but I am, as we discussed, the</p> <p>19 treasurer. That is -- being treasurer is what</p> <p>20 gives me that -- that management function.</p> <p>21 Q. Does anybody report to you in your</p> <p>22 capacity as treasurer of HCMFA?</p> <p>23 A. I don't believe so.</p> <p>24 Q. Does HCMFA have a chief financial</p> <p>25 officer?</p>	<p>Page 27</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't -- I don't know.</p> <p>3 Q. You don't know?</p> <p>4 You're the treasurer of HCMFA but</p> <p>5 you don't know if HCMFA has a chief financial</p> <p>6 officer.</p> <p>7 Do I have that right?</p> <p>8 A. That's right.</p> <p>9 Q. Okay. Have you heard of a company</p> <p>10 called NexPoint Advisors?</p> <p>11 A. Yes.</p> <p>12 Q. We will refer to that as NexPoint.</p> <p>13 Okay?</p> <p>14 A. Okay.</p> <p>15 Q. Were you ever employed by NexPoint?</p> <p>16 A. I don't recall.</p> <p>17 Q. Did you ever hold any title with</p> <p>18 respect to the entity known as NexPoint?</p> <p>19 A. Yes.</p> <p>20 Q. What titles have you held in</p> <p>21 relation to NexPoint?</p> <p>22 A. Treasurer. I think it was only</p> <p>23 treasurer.</p> <p>24 Q. Can you tell me the approximate year</p> <p>25 you became the treasurer of NexPoint?</p>
<p>Page 28</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't know.</p> <p>3 Q. Are you still the treasurer of</p> <p>4 NexPoint today?</p> <p>5 A. I am the acting treasurer for</p> <p>6 NexPoint.</p> <p>7 Q. When did your title change from</p> <p>8 treasurer to acting treasurer?</p> <p>9 A. I don't know.</p> <p>10 Q. Did your duties and responsibilities</p> <p>11 change at all when your title was changed from</p> <p>12 treasurer to acting treasurer?</p> <p>13 A. I don't -- I don't believe so.</p> <p>14 Q. Why did --</p> <p>15 A. I still manage the finance and</p> <p>16 accounting function for NexPoint.</p> <p>17 Q. Why did your title change from</p> <p>18 treasurer to acting treasurer?</p> <p>19 A. I don't -- I'm using the term</p> <p>20 "acting treasurer" as I'm a Skyview employee.</p> <p>21 I don't -- I don't know -- again, I am a -- as</p> <p>22 I am the Skyview employee.</p> <p>23 Q. Okay.</p> <p>24 A. And we -- we provide officer</p> <p>25 services.</p>	<p>Page 29</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And you serve as an officer of</p> <p>3 HCMFA; correct?</p> <p>4 A. I think we went over that with my</p> <p>5 testimony. Yes, I'm the acting treasurer for</p> <p>6 HCMFA.</p> <p>7 Q. And you are an officer of NexPoint;</p> <p>8 correct?</p> <p>9 A. I think -- I am the acting treasurer</p> <p>10 for NexPoint Advisors.</p> <p>11 Q. And -- and who appointed you acting</p> <p>12 treasurer of NexPoint Advisors?</p> <p>13 A. I don't recall specifically.</p> <p>14 Q. Do you have any recollection of who</p> <p>15 might have appointed you the treasurer of</p> <p>16 NexPoint?</p> <p>17 A. I mean, it -- it -- I don't recall</p> <p>18 exactly who it was.</p> <p>19 Q. Who were the possibilities?</p> <p>20 MS. DEITSCH-PEREZ: Object to the</p> <p>21 form.</p> <p>22 Q. You can answer.</p> <p>23 A. Someone in the legal group for</p> <p>24 NexPoint. The other officers as well.</p> <p>25 Q. Have you heard of a company called</p>

<p>Page 30</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Highland Capital Management Services, Inc.?</p> <p>3 A. Yes.</p> <p>4 Q. We will refer to that as HCMS.</p> <p>5 Okay?</p> <p>6 A. HCMS. Okay.</p> <p>7 Q. Were you ever employed by HCMS?</p> <p>8 A. No.</p> <p>9 Q. Have you ever held any titles in</p> <p>10 relation to HCMF -- I apologize -- HCMS?</p> <p>11 A. Yes.</p> <p>12 Q. What titles have you held in</p> <p>13 relation to HCMS?</p> <p>14 A. Treasurer and acting treasurer.</p> <p>15 Q. When did you first become treasurer</p> <p>16 or acting treasurer of HCMS?</p> <p>17 A. I don't recall the exact dates.</p> <p>18 Q. Can you recall -- can you</p> <p>19 approximate the year that you became the</p> <p>20 treasurer of HCMS?</p> <p>21 A. I don't -- I don't know.</p> <p>22 Q. Are you still the treasurer of HCMS</p> <p>23 today?</p> <p>24 A. I am the acting treasurer for HCMS.</p> <p>25 Q. And are your duties and</p>	<p>Page 31</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 responsibilities as the acting treasurer for</p> <p>3 HCMS and the acting treasurer for NexPoint the</p> <p>4 same as your duties and responsibilities in</p> <p>5 your role as the acting treasurer of HCMFA?</p> <p>6 A. More or less.</p> <p>7 Q. Have you ever heard of a company</p> <p>8 called HCRE Partners, LLC?</p> <p>9 A. Yes.</p> <p>10 Q. And do you understand that that</p> <p>11 entity is now known today as NexPoint Real</p> <p>12 Estate Partners?</p> <p>13 A. I did not know that.</p> <p>14 Q. All right. Can we refer to HCRE</p> <p>15 Partners as HCRE?</p> <p>16 MS. DANDENEAU: Objection to form.</p> <p>17 Did you mean NexPoint Real Estate</p> <p>18 Partners, Mr. Morris?</p> <p>19 MR. MORRIS: No.</p> <p>20 MS. DANDENEAU: Oh.</p> <p>21 MR. MORRIS: He said he wasn't</p> <p>22 familiar that it was succeeded by that</p> <p>23 entity. So --</p> <p>24 MS. DANDENEAU: Okay.</p> <p>25 MR. MORRIS: -- let's go with what</p>
<p>Page 32</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 the witness knows.</p> <p>3 Q. You're familiar with an entity</p> <p>4 called HCRE Partners, LLC; correct?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. So that is the entity that we</p> <p>7 will refer to as HCRE. If you're aware of any</p> <p>8 successor, that is great. If not, let's just</p> <p>9 define it as such.</p> <p>10 Have you ever been employed by HCRE</p> <p>11 or any entity that you know to have succeeded</p> <p>12 HCRE?</p> <p>13 A. No.</p> <p>14 Q. Did you ever serve as an officer or</p> <p>15 director of HCRE or any successor?</p> <p>16 A. Not that I recall.</p> <p>17 Q. Okay. Can we refer to NexPoint and</p> <p>18 HCMFA as the advisors?</p> <p>19 A. Yes.</p> <p>20 Q. In general, the advisors provided</p> <p>21 investment advisory services to certain retail</p> <p>22 funds; correct?</p> <p>23 A. Yes.</p> <p>24 Q. And we will refer to the retail</p> <p>25 funds that are served by the advisors</p>	<p>Page 33</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 collectively as the retail funds; is that okay?</p> <p>3 A. Okay.</p> <p>4 Q. Each of the retail funds is governed</p> <p>5 by a board; correct?</p> <p>6 A. Yes.</p> <p>7 Q. And do you know the people who serve</p> <p>8 on the boards of the retail funds?</p> <p>9 MS. DANDENEAU: Objection to form.</p> <p>10 A. I don't know all of them.</p> <p>11 Q. Do you know whether the same people</p> <p>12 serve on the board of each of the retail funds</p> <p>13 as we've defined that term?</p> <p>14 A. Which -- so when you say "retail</p> <p>15 funds" -- again, I want to be -- what retail</p> <p>16 funds are you referring to, because there are</p> <p>17 -- there are several distinctions?</p> <p>18 What retail funds are you using when</p> <p>19 you refer to them?</p> <p>20 Q. That is why -- that is why I tried</p> <p>21 to define the terms. So let me do it again.</p> <p>22 Retail funds for the purposes of</p> <p>23 this deposition means any retail fund to which</p> <p>24 either of the advisors provides advisory</p> <p>25 services. Okay?</p>

<p>Page 34</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Okay.</p> <p>3 Q. Okay. So do you know whether the</p> <p>4 same people serve on the board of each of the</p> <p>5 retail funds?</p> <p>6 A. I don't know.</p> <p>7 Q. Were you ever employed by any of the</p> <p>8 retail funds?</p> <p>9 A. No.</p> <p>10 Q. No?</p> <p>11 A. No.</p> <p>12 Q. Okay. Do you have any title with</p> <p>13 respect to any of the retail funds?</p> <p>14 A. Yes.</p> <p>15 Q. What titles do you hold --</p> <p>16 withdrawn.</p> <p>17 Do you have the same titles with</p> <p>18 respect to all of the retail funds or do</p> <p>19 they -- or just something else?</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 Q. Withdrawn.</p> <p>22 Do you have the same title with</p> <p>23 respect to each of the retail funds?</p> <p>24 A. No.</p> <p>25 Q. Tell me which title you have with</p>	<p>Page 35</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 respect to each retail fund.</p> <p>3 Actually, let's do it a different</p> <p>4 way. I withdraw the question.</p> <p>5 Can you give me one title you have</p> <p>6 in relation to any retail fund?</p> <p>7 A. Yes.</p> <p>8 Q. What title -- what title can you</p> <p>9 give me?</p> <p>10 A. Principal executive officer.</p> <p>11 Q. Do you serve as principal executive</p> <p>12 officer for each of the retail funds?</p> <p>13 A. No.</p> <p>14 Q. Can you identify for me the retail</p> <p>15 funds in which you serve as the principal</p> <p>16 executive officer?</p> <p>17 A. Yes. Highland Funds 1, Highland</p> <p>18 Funds 2, Highland Income Fund, Highland Global</p> <p>19 Allocation Fund.</p> <p>20 Q. I'm sorry, you said "Global</p> <p>21 Allocation Fund"?</p> <p>22 A. Yes.</p> <p>23 VIDEOGRAPHER: Excuse me,</p> <p>24 Mr. Morris. This is the videographer. I'm</p> <p>25 concerned about the lighting in the</p>
<p>Page 36</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 witness' camera.</p> <p>3 Do you want to go off the record and</p> <p>4 make some adjustments?</p> <p>5 MR. MORRIS: Sure, but just for this</p> <p>6 purpose. I don't want to take a break. We</p> <p>7 just started.</p> <p>8 MS. DANDENEAU: Yeah, that is fine.</p> <p>9 That is fine. We're going to put you on</p> <p>10 mute.</p> <p>11 MR. MORRIS: All right.</p> <p>12 MS. DANDENEAU: I'm going to try to</p> <p>13 open up some of the shades.</p> <p>14 VIDEOGRAPHER: We're going off the</p> <p>15 record at 10:08 a.m.</p> <p>16 (Recess taken 10:08 a.m. to 10:11 a.m.)</p> <p>17 VIDEOGRAPHER: We are back on the</p> <p>18 record at 10:11 a.m.</p> <p>19 Q. Mr. Waterhouse, when did you become</p> <p>20 the principal executive officer of the four</p> <p>21 retail funds that you just identified?</p> <p>22 A. I don't recall.</p> <p>23 Q. Do you recall the approximate year</p> <p>24 that you became the principal executive officer</p> <p>25 of the four funds?</p>	<p>Page 37</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. 2021.</p> <p>3 Q. Did you ever hold any title with</p> <p>4 respect to any of the four funds you have just</p> <p>5 identified other than principal executive</p> <p>6 officer?</p> <p>7 A. I don't recall.</p> <p>8 Q. Is it possible that you held a</p> <p>9 position or a title with the four funds you</p> <p>10 just identified prior to 2021?</p> <p>11 A. Yes.</p> <p>12 Q. But you don't recall if you did or</p> <p>13 not; do I have that right?</p> <p>14 A. No. You -- I thought you asked, did</p> <p>15 I hold other titles.</p> <p>16 Q. Did you hold any title at the four</p> <p>17 retail funds for which you now serve as</p> <p>18 principal executive officer at any time prior</p> <p>19 to 2021?</p> <p>20 A. Yes.</p> <p>21 Q. What titles did you hold?</p> <p>22 A. I don't recall all the titles.</p> <p>23 Q. Do you recall any of the titles?</p> <p>24 A. Yes.</p> <p>25 Q. What titles do you recall holding at</p>

<p>Page 38</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 those four retail funds before 2021?</p> <p>3 A. Principal executive officer.</p> <p>4 Q. Were you the principal executive</p> <p>5 officer of the four retail funds that you have</p> <p>6 identified?</p> <p>7 A. Sorry, could you repeat the</p> <p>8 question?</p> <p>9 Q. Were you the principal executive</p> <p>10 officer for each of the four retail funds that</p> <p>11 you have identified?</p> <p>12 A. Yes.</p> <p>13 Q. When did you become the principal</p> <p>14 executive -- withdrawn.</p> <p>15 Can you give me the approximate year</p> <p>16 that you became the principal executive officer</p> <p>17 for each of the four retail funds you've</p> <p>18 identified?</p> <p>19 A. I don't recall.</p> <p>20 Q. What are your duties and</p> <p>21 responsibilities as the principal executive</p> <p>22 officer of these four retail funds?</p> <p>23 A. It is to manage the finance and</p> <p>24 accounting positions.</p> <p>25 Q. So at the same time you serve as the</p>	<p>Page 39</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 treasurer of the advisors, you also serve as</p> <p>3 the principal executive officer of these four</p> <p>4 retail funds; correct?</p> <p>5 A. Yes.</p> <p>6 Q. Did you ever hold any title with</p> <p>7 respect to any other retail fund?</p> <p>8 A. Not that I recall.</p> <p>9 Q. During the period that you served as</p> <p>10 Highland's CFO, from time to time Highland</p> <p>11 loaned money to certain of its officers and</p> <p>12 employees; correct?</p> <p>13 A. Yes.</p> <p>14 Q. During the period that you served as</p> <p>15 Highland's CFO, from time to time Highland</p> <p>16 loaned money to certain --</p> <p>17 A. Let me -- let me retract that,</p> <p>18 sorry, that -- you asked during the time I was</p> <p>19 CFO, Highland loaned moneys to employees. I</p> <p>20 don't -- I don't recall that during my tenure</p> <p>21 of CFO.</p> <p>22 Q. You have no recollection during the</p> <p>23 time that you were the CFO of Highland of</p> <p>24 Highland ever loaning any money to any officer</p> <p>25 or director of Highland?</p>
<p>Page 40</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't recall during my tenure of</p> <p>3 Highland or my -- as CFO of Highland -- yeah,</p> <p>4 if there are any loans as CFO of Highland.</p> <p>5 Q. I'm just talking about officers and</p> <p>6 employees right now. You have no recollection</p> <p>7 of Highland ever making a loan to any of its</p> <p>8 officers or employees during the time that you</p> <p>9 served as CFO. Do I have that right?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 A. So I thought you were saying</p> <p>12 officers and employees as CFO, right, so there</p> <p>13 were -- I mean, okay, yes.</p> <p>14 Q. I would ask you to listen carefully</p> <p>15 to my question. If I -- if I'm not clear, let</p> <p>16 me know, but I'm really trying to be as clear</p> <p>17 as I can.</p> <p>18 A. I'm listening as carefully as I can,</p> <p>19 and you are asking very specific questions in a</p> <p>20 timeline. And I'm trying to answer your</p> <p>21 questions as specifically as I can, and I</p> <p>22 apologize if -- if I'm going back. I am -- you</p> <p>23 are asking very specific questions. Thank you.</p> <p>24 Q. During the period that you served as</p> <p>25 Highland's CFO, from time to time Highland</p>	<p>Page 41</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 loaned money to certain corporate affiliates;</p> <p>3 correct?</p> <p>4 MS. DANDENEAU: Objection to form.</p> <p>5 A. What are corporate affiliates?</p> <p>6 Q. How about the ones that are in</p> <p>7 Highland's audited financial statements under</p> <p>8 the section entitled Loans to Affiliates. Why</p> <p>9 don't we start with those. Do you have any</p> <p>10 understanding of what the phrase "affiliates"</p> <p>11 means?</p> <p>12 MS. DANDENEAU: Objection to form.</p> <p>13 A. I understand what affiliates are,</p> <p>14 yet affiliates can have different meanings in</p> <p>15 different contexts, so...</p> <p>16 Q. Why don't you -- why don't you tell</p> <p>17 me what your understanding of the term</p> <p>18 "affiliate" is in relation to Highland Capital</p> <p>19 Management, L.P.</p> <p>20 A. Is that a -- it depends on the</p> <p>21 context.</p> <p>22 Q. How about the context of making</p> <p>23 loans?</p> <p>24 MS. DANDENEAU: Objection to form.</p> <p>25 A. I didn't make the determination of</p>

<p style="text-align: right;">Page 42</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 who an affiliate was or is at the time those --</p> <p>3 I didn't -- that wasn't my job to make a</p> <p>4 determination of who an affiliate is.</p> <p>5 Q. All right. So as the CFO of</p> <p>6 Highland, do you have any ability right now to</p> <p>7 tell me which companies that were directly or</p> <p>8 indirectly owned and/or controlled by</p> <p>9 Mr. Dondero in whole or in part received loans</p> <p>10 from Highland Capital Management, L.P.?</p> <p>11 MS. DANDENEAU: Objection to form.</p> <p>12 MS. DEITSCH-PEREZ: Objection, form.</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Identify every entity that</p> <p>15 you can think of that was directly or</p> <p>16 indirectly owned and/or controlled by</p> <p>17 Mr. Dondero in whole or in part that received a</p> <p>18 loan from Highland Capital Management, L.P.</p> <p>19 MR. RUKAVINA: Objection, legal</p> <p>20 conclusion.</p> <p>21 A. NexPoint Advisors, Highland Capital</p> <p>22 Management Fund Advisors, HCM Services,</p> <p>23 Dugaboy. Sorry, I don't think -- Dugaboy</p> <p>24 doesn't fit that definition. You said owned</p> <p>25 and controlled. I don't think that that</p>	<p style="text-align: right;">Page 43</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 definition --</p> <p>3 Q. I said owned and/or controlled.</p> <p>4 A. I don't -- again, I'm not -- I'm not</p> <p>5 the legal expert. I don't think it controls --</p> <p>6 he controls Dugaboy, so again, I'm not the</p> <p>7 legal person.</p> <p>8 Q. I'm not asking you for a legal</p> <p>9 conclusion, sir. I'm asking you for your</p> <p>10 knowledge, okay, as the CFO -- the former CFO</p> <p>11 of Highland Capital Management, other than</p> <p>12 NexPoint, HCMFA, and HCMF -- HCMS, can you</p> <p>13 think of any other entities that were owned</p> <p>14 and/or controlled directly or indirectly in</p> <p>15 whole or in part by Jim Dondero who received a</p> <p>16 loan from Highland Capital Management, L.P.?</p> <p>17 MS. DANDENEAU: Objection to form.</p> <p>18 A. HCRE.</p> <p>19 Q. Any others?</p> <p>20 A. That is -- that is all I can think</p> <p>21 of.</p> <p>22 Q. And you're aware that from time to</p> <p>23 time while you were the CFO, Highland loaned</p> <p>24 money to Jim Dondero; correct?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 44</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Can we refer to the four</p> <p>3 entities that you just named and Mr. Dondero as</p> <p>4 the affiliates?</p> <p>5 A. So that would be Jim Dondero,</p> <p>6 NexPoint Advisors, Highland Capital Management</p> <p>7 Fund Advisors, and HCRE.</p> <p>8 Q. And HCMS?</p> <p>9 A. And HCMS, okay.</p> <p>10 Q. And can we refer to the loans that</p> <p>11 were given to each of those affiliates as the</p> <p>12 affiliate loans?</p> <p>13 A. Yes.</p> <p>14 Q. And is it fair to say that each of</p> <p>15 the affiliates were the borrowers under the</p> <p>16 affiliate loans as we're defining the term?</p> <p>17 MR. RUKAVINA: Objection, legal</p> <p>18 conclusion.</p> <p>19 A. The borrowers are whoever were on</p> <p>20 the notes. I don't -- I don't know. I'm not</p> <p>21 the legal person.</p> <p>22 Q. But you --</p> <p>23 A. I don't know.</p> <p>24 Q. You do know, as Highland's former</p> <p>25 CFO, that each of the affiliates that you have</p>	<p style="text-align: right;">Page 45</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 identified tendered notes to Highland; correct?</p> <p>3 MR. RUKAVINA: Hey, John, will you</p> <p>4 just give me a running objection to legal</p> <p>5 conclusion to HCM --</p> <p>6 MR. MORRIS: No. No, if you want to</p> <p>7 object --</p> <p>8 MR. RUKAVINA: I will object every</p> <p>9 time. Object to legal conclusion.</p> <p>10 MR. MORRIS: That is fine.</p> <p>11 A. Sorry, can you repeat the question?</p> <p>12 Q. Are you aware that each of the --</p> <p>13 that each of the affiliates, as we have defined</p> <p>14 the term, gave to Highland a promissory note in</p> <p>15 exchange for the loans?</p> <p>16 MR. RUKAVINA: Objection to the</p> <p>17 extent that calls for a legal conclusion.</p> <p>18 A. I don't.</p> <p>19 Q. No, you don't know that?</p> <p>20 A. No, they didn't -- you said they</p> <p>21 exchanged a promissory note for a loan. I</p> <p>22 don't -- I don't understand that question, so I</p> <p>23 said no.</p> <p>24 Q. At the time of the bankruptcy</p> <p>25 filing, did Highland have in its possession</p>

<p style="text-align: right;">Page 46</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 promissory notes that were signed by each of</p> <p>3 the affiliates?</p> <p>4 A. Yes.</p> <p>5 Q. To the best of your knowledge,</p> <p>6 during the time that you served as Highland's</p> <p>7 CFO, did Highland disclose to its outside</p> <p>8 auditors all of the loans that were made to</p> <p>9 affiliates?</p> <p>10 MR. RUKAVINA: Objection, that calls</p> <p>11 for a legal conclusion.</p> <p>12 MS. DEITSCH-PEREZ: I also couldn't</p> <p>13 hear you, John, because there was some</p> <p>14 garbling on -- on the -- on the call.</p> <p>15 MR. MORRIS: Folks, I've got to tell</p> <p>16 you this is not going well, and I'm</p> <p>17 reserving my right --</p> <p>18 MS. DANDENEAU: John, it was just</p> <p>19 the end of that question. It was just the</p> <p>20 end of that question. I couldn't hear it</p> <p>21 either. Sorry, if you could repeat it,</p> <p>22 please.</p> <p>23 MR. MORRIS: That is less than an</p> <p>24 hour into this, but folks are trying to run</p> <p>25 out the clock, and so I'm just going to</p>	<p style="text-align: right;">Page 47</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 state that now.</p> <p>3 MS. DANDENEAU: You know, and,</p> <p>4 Mr. Morris, I really object to that. I</p> <p>5 mean --</p> <p>6 MR. MORRIS: Okay.</p> <p>7 MS. DANDENEAU: -- Mr. Waterhouse</p> <p>8 just told you he's trying to listen to your</p> <p>9 questions and answer them carefully, and</p> <p>10 you have no basis for saying that.</p> <p>11 MR. MORRIS: Okay.</p> <p>12 MS. DANDENEAU: This does not --</p> <p>13 this is not an experienced witness, so he's</p> <p>14 trying to do the best he can.</p> <p>15 Q. Mr. Waterhouse, during the time that</p> <p>16 you served as Highland's CFO, did Highland</p> <p>17 disclose to its outside auditors all of the</p> <p>18 loans that it made to each of the affiliates</p> <p>19 that you have identified?</p> <p>20 MR. RUKAVINA: Objection, legal</p> <p>21 conclusion.</p> <p>22 A. Yes.</p> <p>23 Q. To the best of your knowledge, while</p> <p>24 you were Highland's CFO, were all of the</p> <p>25 affiliate loans described in Highland's audited</p>
<p style="text-align: right;">Page 48</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 financial statements?</p> <p>3 MR. RUKAVINA: Objection, legal</p> <p>4 conclusion.</p> <p>5 A. When an audit was performed, any</p> <p>6 loans that were made by Highland to the</p> <p>7 affiliates were disclosed to auditors.</p> <p>8 Q. Are you aware of any loan that was</p> <p>9 made to any affiliate that was not disclosed to</p> <p>10 the auditors?</p> <p>11 A. I'm not aware.</p> <p>12 Q. To the best of your knowledge, did</p> <p>13 each of the affiliates who were --</p> <p>14 (inaudible) -- loaned from Highland execute a</p> <p>15 promissory note in connection with that loan?</p> <p>16 MR. RUKAVINA: Objection, legal</p> <p>17 conclusion.</p> <p>18 A. Sorry, you -- halfway through the</p> <p>19 question it got muffled.</p> <p>20 Can you repeat that again?</p> <p>21 Q. To the best of your knowledge, did</p> <p>22 every affiliate execute a promissory note in</p> <p>23 connection with each loan that it obtained from</p> <p>24 Highland?</p> <p>25 MR. RUKAVINA: Objection, legal</p>	<p style="text-align: right;">Page 49</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 conclusion.</p> <p>3 A. Yes.</p> <p>4 Q. You are not aware of any loan that</p> <p>5 any affiliate ever obtained from Highland where</p> <p>6 the affiliate did not give a promissory note in</p> <p>7 return; is that fair?</p> <p>8 A. Yes, I'm not aware.</p> <p>9 Q. And to the best of your knowledge,</p> <p>10 did Highland loan to each affiliate an amount</p> <p>11 of money equal to the principal amount of each</p> <p>12 promissory note?</p> <p>13 MR. RUKAVINA: Objection, legal</p> <p>14 conclusion.</p> <p>15 A. Yes.</p> <p>16 Q. During the time that you served as</p> <p>17 CFO, did Highland ever loan money to</p> <p>18 Mark Okada?</p> <p>19 A. I -- I don't recall.</p> <p>20 Q. Did you ever see any promissory</p> <p>21 notes executed by Mark Okada?</p> <p>22 A. I don't recall.</p> <p>23 Q. Do you know if Highland ever forgave</p> <p>24 any loan that it ever made to Mr. Okada?</p> <p>25 A. I don't recall.</p>

<p style="text-align: right;">Page 50</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Do you recall if Mr. Okada paid back</p> <p>3 all principal and interest due and owing under</p> <p>4 any loan he obtained from Highland?</p> <p>5 MS. DEITSCH-PEREZ: Objection to</p> <p>6 form.</p> <p>7 MS. DANDENEAU: Objection to form.</p> <p>8 A. I don't recall.</p> <p>9 Q. Do you recall whether -- during your</p> <p>10 time as CFO, whether Highland ever loaned money</p> <p>11 to Jim Dondero?</p> <p>12 A. Yes.</p> <p>13 Q. To the best of your knowledge, did</p> <p>14 Mr. Dondero sign and deliver to Highland a</p> <p>15 promissory note in connection with each loan</p> <p>16 that he obtained from Highland?</p> <p>17 A. If you are referring to the</p> <p>18 promissory notes that, you know, part of</p> <p>19 Highland's records, yes.</p> <p>20 Q. Okay. You're not aware of any loan</p> <p>21 that Mr. Dondero took from Highland that wasn't</p> <p>22 backed up by -- by a promissory note with a</p> <p>23 face -- with a principal amount equal to the</p> <p>24 amount of the loan; correct?</p> <p>25 A. Am I aware that Jim Dondero took a</p>	<p style="text-align: right;">Page 51</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 loan?</p> <p>3 Q. Without giving a -- let me ask a</p> <p>4 better question. I'm sorry, Mr. Waterhouse.</p> <p>5 Are you aware of any loan that</p> <p>6 Mr. Dondero obtained from Highland where he</p> <p>7 didn't give a promissory note in return?</p> <p>8 A. I'm not aware.</p> <p>9 Q. During the time that you served as</p> <p>10 Highland's CFO, did Highland ever forgive any</p> <p>11 loans, in whole or in part, that it made to</p> <p>12 Mr. Dondero?</p> <p>13 A. Not that I'm aware.</p> <p>14 Q. At the time that you served as</p> <p>15 Highland's CFO, did Highland ever forgive any</p> <p>16 loan, in whole or in part, that it made to any</p> <p>17 affiliate as we've defined the term today?</p> <p>18 A. Not that I'm aware.</p> <p>19 Q. During the time that you served as</p> <p>20 Highland's CFO, did Highland ever forgive, in</p> <p>21 whole or in part, any loan that it ever made to</p> <p>22 any officer or employee?</p> <p>23 A. Highland forgave loans to officers</p> <p>24 and employees. It may not have been at the</p> <p>25 time when my title was CFO.</p>
<p style="text-align: right;">Page 52</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. And so I appreciate the</p> <p>3 distinction.</p> <p>4 Is it fair to say that, to the best</p> <p>5 of your knowledge, Highland did not forgive a</p> <p>6 loan that it made to an officer or employee</p> <p>7 after 2013?</p> <p>8 MS. DANDENEAU: Objection to form.</p> <p>9 A. I don't recall.</p> <p>10 Q. To the best of your knowledge, did</p> <p>11 Highland disclose to its auditors every</p> <p>12 instance where it forgave, in whole or in part,</p> <p>13 a loan that it had made to one of its officers</p> <p>14 or employees?</p> <p>15 A. No.</p> <p>16 Q. Can you think of -- can you -- can</p> <p>17 you identify any loan to an officer or employee</p> <p>18 that was forgiven by Highland, in whole or in</p> <p>19 part, that was not disclosed to Highland's</p> <p>20 outside auditors?</p> <p>21 A. Look, I don't recall all of the</p> <p>22 loans and the loan forgiveness. I just know as</p> <p>23 part of the audit process there is a</p> <p>24 materiality concept.</p> <p>25 So if there were loans to employees</p>	<p style="text-align: right;">Page 53</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 that were of -- you know, that were deemed</p> <p>3 immaterial, those items may not have been</p> <p>4 disclosed by the team to the auditors.</p> <p>5 Q. I appreciate that.</p> <p>6 Do you have an understanding as to</p> <p>7 what the level of materiality was?</p> <p>8 A. I don't recall.</p> <p>9 Q. As the CFO of Highland, to the best</p> <p>10 of your knowledge, did Highland disclose to its</p> <p>11 outside auditors every loan that was forgiven,</p> <p>12 in whole or in part, that was material as that</p> <p>13 term was defined by the outside auditors?</p> <p>14 A. Yes.</p> <p>15 Q. And do you recall where -- do you</p> <p>16 recall where the definition of materiality can</p> <p>17 be found for -- for this particular purpose?</p> <p>18 MS. DANDENEAU: Objection to form.</p> <p>19 A. No. You -- I don't determine</p> <p>20 materiality.</p> <p>21 Q. Okay. I'm just asking you if you</p> <p>22 can help me understand where it is, but I think</p> <p>23 we will find it in a few minutes.</p> <p>24 You are aware that Highland has</p> <p>25 commenced lawsuits against each of the</p>

<p>Page 54</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 affiliates, as we've defined the term, to</p> <p>3 collect under certain promissory notes; is that</p> <p>4 right?</p> <p>5 A. Yes.</p> <p>6 Q. And are you familiar with the notes</p> <p>7 that are issue -- at issue in the lawsuits?</p> <p>8 MS. DANDENEAU: Objection to form.</p> <p>9 A. Generally familiar.</p> <p>10 Q. Can we refer to the lawsuits that</p> <p>11 Highland has commenced against the affiliates</p> <p>12 collectively as the lawsuits?</p> <p>13 A. Yes. And, again, the affiliates are</p> <p>14 NexPoint, HCMFA, HCMS, and HCRE.</p> <p>15 Q. And Mr. Dondero?</p> <p>16 A. Okay. See, that is a new -- and now</p> <p>17 Mr. Dondero is included in your affiliate</p> <p>18 definition.</p> <p>19 Q. I just --</p> <p>20 A. I thought affiliates -- I thought</p> <p>21 affiliates were just the four prior entities,</p> <p>22 so I just want to be clear.</p> <p>23 Q. I appreciate that. So let's --</p> <p>24 let's keep them separate and let's refer to the</p> <p>25 four corporate entities as the affiliates, and</p>	<p>Page 55</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Mr. Dondero we will call Mr. Dondero. Okay?</p> <p>3 A. Okay. Thank you. As you can see,</p> <p>4 Mr. Morris, there is a lot of entities -- a lot</p> <p>5 here. I just want to be clear.</p> <p>6 Q. Okay. Now, the affiliates of</p> <p>7 Mr. Dondero signed promissory notes that are</p> <p>8 not subject to the lawsuit.</p> <p>9 Do you understand that?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 A. The affiliates and Mr. Dondero</p> <p>12 signed --</p> <p>13 Q. You know what? I will skip it.</p> <p>14 That is okay. Okay.</p> <p>15 From time to time while you were</p> <p>16 Highland's CFO, payments were applied against</p> <p>17 principal and interests that were due under the</p> <p>18 notes that were tendered by the affiliates and</p> <p>19 Mr. Dondero; correct?</p> <p>20 MR. RUKAVINA: Objection to the</p> <p>21 extent that calls for a legal conclusion.</p> <p>22 A. Yes.</p> <p>23 Q. Did Highland have a process where --</p> <p>24 whereby payments would be applied against</p> <p>25 principal and interest against the notes that</p>
<p>Page 56</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 were given by the affiliates and Mr. Dondero?</p> <p>3 A. Yes.</p> <p>4 Q. Can you describe the process for me?</p> <p>5 A. The process, payment should be</p> <p>6 applied as laid out in the -- in the promissory</p> <p>7 note.</p> <p>8 Q. From time to time were payments made</p> <p>9 that were not required under the promissory</p> <p>10 notes?</p> <p>11 MS. DANDENEAU: Objection to form.</p> <p>12 A. Yes.</p> <p>13 Q. Who was responsible for deciding</p> <p>14 when and how much the payments would be made</p> <p>15 with respect to each of the notes that were</p> <p>16 issued by the affiliates and Mr. Dondero?</p> <p>17 A. Who was responsible for deciding how</p> <p>18 much was paid prior to the due date?</p> <p>19 Q. Yes.</p> <p>20 A. I don't know.</p> <p>21 Q. Did you approve of each payment that</p> <p>22 was made against principal and interest on the</p> <p>23 notes that were given by the affiliates and</p> <p>24 Mr. Dondero?</p> <p>25 MS. DANDENEAU: Objection to form.</p>	<p>Page 57</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Did I approve the payments? I</p> <p>3 approve -- I approve -- if there was cash -- if</p> <p>4 there was cash being repaid on a note payment,</p> <p>5 yes, I approved in the general sense of being</p> <p>6 made aware of the payment and the amount.</p> <p>7 Q. And are you the person who</p> <p>8 authorized Highland's employees to effectuate</p> <p>9 those payments?</p> <p>10 A. Yes.</p> <p>11 Q. When you gave the instruction to</p> <p>12 effectuate the payment, did you obtain</p> <p>13 Mr. Dondero's prior approval?</p> <p>14 A. I mean, it -- I mean, it -- it</p> <p>15 depends.</p> <p>16 Q. Can you think of any instance where</p> <p>17 you directed Highland's employees to make a</p> <p>18 payment of principal or interest against any</p> <p>19 note that was tendered by an affiliate or</p> <p>20 Mr. Dondero that Mr. Dondero did not approve of</p> <p>21 in advance?</p> <p>22 A. I can't recall specifically.</p> <p>23 Q. Can you identify -- withdrawn.</p> <p>24 Did Mr. Dondero ever tell you that a</p> <p>25 payment that was made against principal and</p>

<p>Page 58</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 interest due under one of the notes that was</p> <p>3 tendered by an affiliate or himself should not</p> <p>4 have been made?</p> <p>5 A. Yes.</p> <p>6 Q. Can you identify the payment for me?</p> <p>7 A. It would be for -- for NexPoint</p> <p>8 Advisors.</p> <p>9 Q. Okay. And when did Mr. Dondero tell</p> <p>10 you that a payment that you had initiated on</p> <p>11 behalf of NexPoint should not have been made?</p> <p>12 A. I wasn't initiating payment. It was</p> <p>13 in the context of the -- I think you used this</p> <p>14 term, "the advisors," so NexPoint Advisors and</p> <p>15 Highland Capital Management Fund Advisors had</p> <p>16 overpaid on certain agreements with Highland</p> <p>17 Capital Management, L.P. And as a part of that</p> <p>18 process, the advisors -- what I was told at the</p> <p>19 time were in talks and negotiations and</p> <p>20 discussions with Highland Capital Management,</p> <p>21 L.P., on offsets in relation to those</p> <p>22 overpayments.</p> <p>23 Q. When did this conversation take</p> <p>24 place?</p> <p>25 MS. DANDENEAU: Objection to form.</p>	<p>Page 59</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't recall specifically.</p> <p>3 Q. Do you recall what year it was?</p> <p>4 A. Yes.</p> <p>5 Q. What year did the conversation with</p> <p>6 Mr. Dondero take place that you just described?</p> <p>7 A. 2020.</p> <p>8 Q. Okay. Do you remember if it was</p> <p>9 December 2020?</p> <p>10 A. It -- it -- I don't -- I don't</p> <p>11 recall what month specifically, but it would</p> <p>12 have been November or December.</p> <p>13 Q. And we're talking here about a</p> <p>14 payment of principal and/or interest that was</p> <p>15 due -- withdrawn.</p> <p>16 We're talking here about a payment</p> <p>17 of principal and interest that was applied</p> <p>18 against NexPoint's note; correct?</p> <p>19 MS. DANDENEAU: Objection to form.</p> <p>20 A. I don't recall what that payment</p> <p>21 consisted of.</p> <p>22 Q. Is it possible that the payment you</p> <p>23 have in mind related to the shared services</p> <p>24 agreement?</p> <p>25 MS. DANDENEAU: Objection to form.</p>
<p>Page 60</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. No.</p> <p>3 Q. Are you certain that the payment --</p> <p>4 that the payment that you have in mind related</p> <p>5 to the promissory note that NexPoint issued in</p> <p>6 favor of Highland?</p> <p>7 MS. DANDENEAU: Objection to form.</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Other than that one payment,</p> <p>10 can you identify any other instance where</p> <p>11 Mr. Dondero told you that a payment should not</p> <p>12 have been applied against principal and</p> <p>13 interest under any promissory note tendered by</p> <p>14 any affiliate or Mr. Dondero?</p> <p>15 MS. DANDENEAU: Objection to form.</p> <p>16 MS. DEITSCH-PEREZ: Objection to</p> <p>17 form.</p> <p>18 A. Not that I recall.</p> <p>19 Q. Thank you very much.</p> <p>20 Do you know if Mr. Dondero approved</p> <p>21 in advance of each loan made to each affiliate</p> <p>22 and himself during the time that you were the</p> <p>23 CFO?</p> <p>24 MS. DEITSCH-PEREZ: Object to the</p> <p>25 form.</p>	<p>Page 61</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes, generally.</p> <p>3 Q. Can you identify any loan that was</p> <p>4 ever made to an affiliate or to Mr. Dondero</p> <p>5 that Mr. Dondero did not approve of in advance?</p> <p>6 A. Other than the ones that are in</p> <p>7 dispute, I'm not aware.</p> <p>8 Q. Do you believe that Mr. Dondero did</p> <p>9 not approve of each of the loans that are in</p> <p>10 dispute in advance of the time that the loan</p> <p>11 was made?</p> <p>12 MS. DANDENEAU: Objection to form.</p> <p>13 A. Given what is in the dispute, you</p> <p>14 know, and -- and -- and the way things might --</p> <p>15 yeah, I mean...</p> <p>16 Q. I am not asking about the dispute,</p> <p>17 and it was probably my mistake to follow you</p> <p>18 there.</p> <p>19 Were you aware of every loan made by</p> <p>20 Highland to each of its affiliates and</p> <p>21 Mr. Dondero while you were the CFO at the time</p> <p>22 each loan was made?</p> <p>23 A. Was I aware of every loan, yes.</p> <p>24 Q. Okay. And if you put yourself back</p> <p>25 in time, do you recall that any of the loans</p>

<p>Page 62</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 that were made to one of the affiliates or</p> <p>3 Mr. Dondero during the time that you were the</p> <p>4 CFO was made without Mr. Dondero's prior</p> <p>5 knowledge and approval?</p> <p>6 A. Not that I recall.</p> <p>7 Q. Thank you. In fact, do you -- as</p> <p>8 the CFO, would you have allowed Highland to</p> <p>9 loan money to an affiliate or to Mr. Dondero</p> <p>10 without obtaining Mr. Dondero's prior approval?</p> <p>11 MS. DANDENEAU: Objection to form.</p> <p>12 A. I can't -- there was so many times</p> <p>13 over the years, I can't speak for every single</p> <p>14 one, but generally, yes, I -- I spoke to him.</p> <p>15 Q. You -- you never -- you never --</p> <p>16 withdrawn. I will just take that.</p> <p>17 Can you recall any payment that was</p> <p>18 ever made against principal and interest on a</p> <p>19 note that was issued in favor of Highland by an</p> <p>20 affiliate or Mr. Dondero that you personally</p> <p>21 did not know about in advance?</p> <p>22 A. There are so many through the years,</p> <p>23 I don't -- I don't -- I don't recall every</p> <p>24 single one.</p> <p>25 Q. Okay. Can you identify any payment</p>	<p>Page 63</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 that was made against principal and interest on</p> <p>3 any note tendered by any affiliate or</p> <p>4 Mr. Dondero that you didn't know about in</p> <p>5 advance?</p> <p>6 A. I don't recall.</p> <p>7 Q. Other than Mr. Dondero -- withdrawn.</p> <p>8 Did anybody at Highland have the</p> <p>9 authority to make a payment against principal</p> <p>10 and interest due under a loan given to the</p> <p>11 affiliates and Mr. Dondero without your</p> <p>12 knowledge and approval?</p> <p>13 MS. DANDENEAU: Objection to form.</p> <p>14 A. Sorry, there was -- to make a</p> <p>15 payment on an affiliate loan, what you are</p> <p>16 saying would it require my knowledge and</p> <p>17 approval, yes.</p> <p>18 Q. Okay. I appreciate that. Thank</p> <p>19 you.</p> <p>20 Did anybody at Highland have the</p> <p>21 authority, to the best of your knowledge, to</p> <p>22 effectuate a loan to an affiliate without</p> <p>23 Mr. Dondero's prior knowledge and approval?</p> <p>24 MS. DANDENEAU: Objection to form.</p> <p>25 A. I can't speak for all, but</p>
<p>Page 64</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 generally, yes.</p> <p>3 Q. Did you personally communicate with</p> <p>4 Mr. Dondero to let him know each time a payment</p> <p>5 of principal or interest was being made against</p> <p>6 any note that was tendered by an affiliate or</p> <p>7 Mr. Dondero to Highland?</p> <p>8 A. I don't -- are you saying, did I let</p> <p>9 Mr. Dondero know if a payment was made on any</p> <p>10 affiliate or loan to Mr. Dondero? I mean,</p> <p>11 not -- not every -- no.</p> <p>12 Q. Let me ask it this way: Did you</p> <p>13 have a practice of informing Mr. Dondero when</p> <p>14 payments were made against principal and</p> <p>15 interest on any note that was tendered by an</p> <p>16 affiliate or Mr. Dondero?</p> <p>17 MS. DEITSCH-PEREZ: Objection to</p> <p>18 form.</p> <p>19 MS. DANDENEAU: Objection to form.</p> <p>20 A. No, I did not.</p> <p>21 Q. Did Mr. Dondero ever tell you that a</p> <p>22 payment of principal or interest had been made</p> <p>23 against a note that was tendered by an</p> <p>24 affiliate or himself that he had been unaware</p> <p>25 of?</p>	<p>Page 65</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Not that I recall.</p> <p>3 Q. Are you aware that Mr. Dondero and</p> <p>4 the affiliates -- withdrawn.</p> <p>5 Are you aware that Mr. Dondero</p> <p>6 NexPoint, HCRE, and HCMS all contend that they</p> <p>7 do not have to pay on any of the notes they</p> <p>8 issued because they are subject to an oral</p> <p>9 agreement between Mr. Dondero and Nancy</p> <p>10 Dondero, in her capacity as the trustee of the</p> <p>11 Dugaboy Investment Trust?</p> <p>12 MS. DANDENEAU: Objection to form.</p> <p>13 A. I didn't -- I didn't -- I didn't</p> <p>14 know that it was all notes.</p> <p>15 Q. Okay. Are you -- did you ever learn</p> <p>16 that there was an oral agreement between Jim</p> <p>17 Dondero and Nancy Dondero pertaining to any</p> <p>18 notes issued by any affiliate or Mr. Dondero?</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 A. Yes.</p> <p>22 Q. Do you have any understanding as to</p> <p>23 the terms of that agreement?</p> <p>24 A. Yes.</p> <p>25 Q. What is your understanding of the</p>

<p>Page 66</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 terms of the agreement?</p> <p>3 A. That there were certain milestones</p> <p>4 that had to be reached.</p> <p>5 Q. Do you have any understanding of the</p> <p>6 terms of the agreement between Mr. Dondero and</p> <p>7 Nancy Dondero concerning any of the notes</p> <p>8 issued by the affiliates or Mr. Dondero other</p> <p>9 than that there have to be milestones reached?</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form.</p> <p>12 A. There are milestones, I found out</p> <p>13 yesterday, or there was some --</p> <p>14 MS. DANDENEAU: Okay. I'm just</p> <p>15 going to object to the extent that you</p> <p>16 learned anything in conversations with</p> <p>17 counsel, please don't reveal -- that is</p> <p>18 privileged, and don't reveal any privileged</p> <p>19 communications.</p> <p>20 THE WITNESS: Okay.</p> <p>21 A. So I'm not aware of anything else.</p> <p>22 Q. Do you know what the milestones</p> <p>23 were?</p> <p>24 MS. DANDENEAU: Objection to form.</p> <p>25 A. I don't.</p>	<p>Page 67</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Do you know anything about -- do you</p> <p>3 know what promissory notes the agreement</p> <p>4 covered?</p> <p>5 A. I don't.</p> <p>6 Q. Do you know if -- if Jim and Nancy</p> <p>7 Dondero entered into one agreement or more than</p> <p>8 one agreement?</p> <p>9 MS. DEITSCH-PEREZ: Object to the</p> <p>10 form.</p> <p>11 A. I don't know.</p> <p>12 Q. Do you know if the agreement is in</p> <p>13 writing?</p> <p>14 A. I don't know.</p> <p>15 Q. How did you learn of the existence</p> <p>16 of the agreement?</p> <p>17 MS. DANDENEAU: Objection to form.</p> <p>18 Again --</p> <p>19 A. I don't -- I don't recall who told</p> <p>20 me.</p> <p>21 Q. You have no recollection of who told</p> <p>22 you about this agreement between Jim and Nancy</p> <p>23 Dondero?</p> <p>24 MS. DEITSCH-PEREZ: Object to the</p> <p>25 form.</p>
<p>Page 68</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't recall.</p> <p>3 Q. Do you recall how you learned of the</p> <p>4 agreement?</p> <p>5 Was it in a meeting? Was it in a</p> <p>6 phone call? Was it in an email?</p> <p>7 A. I don't recall.</p> <p>8 Q. Do you recall when you learned of</p> <p>9 the agreement?</p> <p>10 A. Not specifically.</p> <p>11 Q. Do you recall what year you learned</p> <p>12 of the agreement?</p> <p>13 A. In -- look, I mean, there are so</p> <p>14 many notes. I may be getting -- I believe it</p> <p>15 was 2020.</p> <p>16 Q. All right. I'm not asking about</p> <p>17 notes, sir. I'm asking about the agreement</p> <p>18 that you testified you knew about between Jim</p> <p>19 and Don- -- Nancy Dondero. Okay.</p> <p>20 Do you understand my question now?</p> <p>21 Should I ask my question again?</p> <p>22 A. Yeah, sure. Go ahead.</p> <p>23 Q. I'm going to use the word</p> <p>24 "agreement" to refer to the agreement that</p> <p>25 Mr. Dondero and Nancy Dondero entered into</p>	<p>Page 69</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 where you understood that certain milestones</p> <p>3 had to be reached. Okay?</p> <p>4 A. Uh-huh.</p> <p>5 MS. DANDENEAU: Objection.</p> <p>6 MS. DEITSCH-PEREZ: Object to the</p> <p>7 form.</p> <p>8 MR. MORRIS: Just defining a term,</p> <p>9 what is the objection.</p> <p>10 MS. DEITSCH-PEREZ: The objection --</p> <p>11 MR. MORRIS: I will move on. I will</p> <p>12 move on.</p> <p>13 MS. DEITSCH-PEREZ: John --</p> <p>14 Q. Sir, are you okay with that</p> <p>15 definition of agreement?</p> <p>16 A. Okay.</p> <p>17 Q. Okay. So you don't recall who --</p> <p>18 who informed you of the existence of the</p> <p>19 agreement; is that right?</p> <p>20 A. I don't recall.</p> <p>21 Q. You don't recall who told you the</p> <p>22 terms of the agreement.</p> <p>23 Do I have that right?</p> <p>24 A. Correct.</p> <p>25 Q. And you don't recall if you learned</p>

<p style="text-align: right;">Page 70</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 about the agreement in a meeting, through an</p> <p>3 email, or through a phone call.</p> <p>4 Do I have that right?</p> <p>5 A. I don't recall.</p> <p>6 Q. Can you tell me when you learned of</p> <p>7 the agreement?</p> <p>8 A. I don't -- I don't -- I don't</p> <p>9 remember specifically.</p> <p>10 Q. Can you tell me if you learned of</p> <p>11 the agreement before or after the petition</p> <p>12 date?</p> <p>13 A. It would have been -- it would have</p> <p>14 been after.</p> <p>15 Q. Can you tell me if you learned of</p> <p>16 the agreement before or after January 9th,</p> <p>17 2020?</p> <p>18 A. It would have been after.</p> <p>19 Q. Can you tell me if you learned of</p> <p>20 the agreement before or after you left Highland</p> <p>21 Capital Management in February of 2021?</p> <p>22 A. I don't -- I don't -- I don't know.</p> <p>23 Q. It is possible that you learned of</p> <p>24 it while you were a Highland employee.</p> <p>25 Do I have that right?</p>	<p style="text-align: right;">Page 71</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't remember the -- I mean, it</p> <p>3 was sometime in 2021. I don't remember when.</p> <p>4 Q. All right. So to the best of your</p> <p>5 recollection, it was in 2021 but you don't</p> <p>6 recall if it was before or after you ceased to</p> <p>7 be a Highland employee.</p> <p>8 Do I have that right?</p> <p>9 A. Yeah, I mean, it was -- it was</p> <p>10 likely after I was -- after I left Highland</p> <p>11 because, if I put myself back into the last</p> <p>12 days of -- of 2021, it was -- you know, the</p> <p>13 communications with Mr. Dondero were -- were --</p> <p>14 were -- there weren't as many communications</p> <p>15 because of the circumstances.</p> <p>16 Q. And so based on that you believe</p> <p>17 that it is most likely that you learned of this</p> <p>18 agreement sometime after you left Highland</p> <p>19 employment?</p> <p>20 A. I wouldn't use the term "most</p> <p>21 likely." I don't recall specifically. I don't</p> <p>22 recall.</p> <p>23 Q. Do you recall ever telling Jim Seery</p> <p>24 about this agreement?</p> <p>25 A. No, I don't -- I didn't tell</p>
<p style="text-align: right;">Page 72</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Jim Seery.</p> <p>3 Q. Did you tell anybody at DSI about</p> <p>4 this agreement?</p> <p>5 A. No.</p> <p>6 Q. Did you tell any of Highland's</p> <p>7 independent directors about this agreement?</p> <p>8 A. No.</p> <p>9 Q. Did you tell anybody at Pachulski</p> <p>10 Stang Ziehl & Jones about this agreement?</p> <p>11 A. No.</p> <p>12 Q. Did you tell any employee of</p> <p>13 Highland about this agreement?</p> <p>14 A. No.</p> <p>15 MS. DANDENEAU: Mr. Morris, it has</p> <p>16 been an hour and a half. Is this a good</p> <p>17 time for a break?</p> <p>18 MR. MORRIS: Sure.</p> <p>19 Q. Mr. Waterhouse, I will just remind</p> <p>20 you that during the break please don't speak</p> <p>21 with anybody about the deposition, the</p> <p>22 substance of your testimony or anything else</p> <p>23 concerning the deposition. Okay?</p> <p>24 A. Yes.</p> <p>25 MR. MORRIS: So it is 11:02. We're</p>	<p style="text-align: right;">Page 73</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 at 11:02 your time. Let's come back, I</p> <p>3 guess, at 15 -- at 11:15 your time.</p> <p>4 VIDEOGRAPHER: We're going off the</p> <p>5 record at 11:02 a.m.</p> <p>6 (Recess taken 11:02 a.m. to 11:20 a.m.)</p> <p>7 VIDEOGRAPHER: We are back on the</p> <p>8 record at 11:20 a.m.</p> <p>9 Q. Mr. Waterhouse, did you speak with</p> <p>10 anybody during the break about this deposition?</p> <p>11 A. No.</p> <p>12 MS. DANDENEAU: Other than -- other</p> <p>13 than his counsel.</p> <p>14 Q. Did you speak to your counsel about</p> <p>15 the substance of your deposition today?</p> <p>16 A. No, I didn't bring it up.</p> <p>17 Q. I didn't ask you if you brought it</p> <p>18 up. I asked you if you had any conversation</p> <p>19 with your lawyer about the substance of your</p> <p>20 deposition.</p> <p>21 MS. DANDENEAU: Yes, he did.</p> <p>22 Q. Can you tell me what the -- you</p> <p>23 discussed?</p> <p>24 MS. DANDENEAU: No, I object to</p> <p>25 that. He's not going to answer. That is a</p>

<p>Page 74</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 privileged conversation.</p> <p>3 MR. MORRIS: So I just want to make</p> <p>4 sure that I understand. During the break</p> <p>5 you spoke with your client about the</p> <p>6 substance of this deposition; is that</p> <p>7 right?</p> <p>8 MS. DANDENEAU: Yes, John.</p> <p>9 MR. MORRIS: And you refuse -- you</p> <p>10 refuse to let your client tell me what was</p> <p>11 discussed; is that right?</p> <p>12 MS. DANDENEAU: That's correct.</p> <p>13 MR. MORRIS: You know, I had given</p> <p>14 the instruction prior to the break not to</p> <p>15 speak with counsel. I would have</p> <p>16 appreciated --</p> <p>17 MS. DANDENEAU: No, you didn't --</p> <p>18 actually, that is not true, Mr. Morris.</p> <p>19 You said not to speak with anyone. We</p> <p>20 never have interpreted that to mean</p> <p>21 conversations with counsel. That's never</p> <p>22 been -- I have never, ever heard that</p> <p>23 instruction.</p> <p>24 MR. MORRIS: Okay. We will -- we</p> <p>25 will -- we will deal with it when and if we</p>	<p>Page 75</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 have to.</p> <p>3 Q. Mr. Waterhouse, after learning about</p> <p>4 the agreement, did you ask anybody if the</p> <p>5 agreement was reflected in a writing?</p> <p>6 MS. DANDENEAU: Objection to form.</p> <p>7 A. No.</p> <p>8 Q. Did you ask anybody if the terms of</p> <p>9 the agreement were memorialized anywhere?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 MR. MORRIS: What is the --</p> <p>12 A. No.</p> <p>13 MS. DANDENEAU: Well, because you</p> <p>14 keep talking about this agreement and I --</p> <p>15 I -- I think, Mr. Morris, that is really</p> <p>16 not clear what you mean by "the agreement."</p> <p>17 And maybe you can just go back and restate</p> <p>18 what that is.</p> <p>19 MR. MORRIS: Okay. Your client has</p> <p>20 agreed with me twice on the definition, but</p> <p>21 I will try one more time.</p> <p>22 Q. Mr. Waterhouse, do you understand</p> <p>23 that when I use the term "agreement," I'm</p> <p>24 referring to the agreement between Jim and</p> <p>25 Nancy Dondero concerning certain promissory</p>
<p>Page 76</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 notes where you learned that one of the terms</p> <p>3 of the agreement was milestones reached?</p> <p>4 A. Okay.</p> <p>5 Q. And did you understand that that was</p> <p>6 the -- the agreement that we were referring to</p> <p>7 every time we used the word "agreement" in this</p> <p>8 deposition?</p> <p>9 A. I don't know anything about this</p> <p>10 agreement. So, look, I do -- it -- I don't</p> <p>11 know whether --</p> <p>12 Q. Let's -- let's try this again.</p> <p>13 A. Yeah. Look, I don't know what this</p> <p>14 agreement relates.</p> <p>15 MS. DEITSCH-PEREZ: John, John --</p> <p>16 Q. Let me try --</p> <p>17 MS. DEITSCH-PEREZ: John, please let</p> <p>18 the witness finish.</p> <p>19 MR. MORRIS: Please stop. Please</p> <p>20 stop. Please stop talking.</p> <p>21 MS. DEITSCH-PEREZ: No, you stop.</p> <p>22 Let the witness --</p> <p>23 MR. MORRIS: Stop talking.</p> <p>24 MS. DEITSCH-PEREZ: -- finish -- you</p> <p>25 interrupted him.</p>	<p>Page 77</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MR. MORRIS: You know what, you</p> <p>3 guys, this is really wrong. It is really,</p> <p>4 really wrong. Okay?</p> <p>5 I had the witness agree not once,</p> <p>6 but twice to the definition of agreement.</p> <p>7 Okay? I'm going to try and do it a third</p> <p>8 time.</p> <p>9 MS. DANDENEAU: No, but, please,</p> <p>10 John, really --</p> <p>11 MR. MORRIS: No, please stop</p> <p>12 talking. Please. It is my deposition.</p> <p>13 Object to questions.</p> <p>14 MS. DANDENEAU: No, but also you</p> <p>15 instructed him that -- that if you were</p> <p>16 going -- if you were interrupting him, that</p> <p>17 he should remind you that you're</p> <p>18 interrupting him and -- and --</p> <p>19 MR. MORRIS: Let him do that. Let</p> <p>20 him do that.</p> <p>21 MS. DANDENEAU: Okay. Well, you --</p> <p>22 MR. MORRIS: Please stop talking.</p> <p>23 A. Okay. I don't know any of the</p> <p>24 details of these agreements. I don't know</p> <p>25 anything about them. I heard -- someone -- I</p>

<p style="text-align: right;">Page 78</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 don't know who, I don't know when, as you</p> <p>3 asked, sometime in '21, someone told me about</p> <p>4 this -- or I don't honestly know -- I don't</p> <p>5 even recall exactly how I was made aware of</p> <p>6 this, but I was. I don't know -- I don't know</p> <p>7 any of these details, and I'm getting -- again,</p> <p>8 there is, you know, I -- I -- I had a passing</p> <p>9 conversation with -- with Jim at some point</p> <p>10 on -- on some -- on the executive comp, and I'm</p> <p>11 getting confused of what is what, because</p> <p>12 again, I don't know any of these details.</p> <p>13 Q. Okay. Let me try again,</p> <p>14 Mr. Waterhouse, and I apologize.</p> <p>15 Are you aware of any agreement</p> <p>16 between Jim Dondero and Nancy Dondero</p> <p>17 concerning any promissory note that was given</p> <p>18 to Highland by any affiliate or Mr. Dondero?</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 A. I've heard of an agreement. That</p> <p>22 is -- that is -- I mean, if you are using aware</p> <p>23 as heard, sure.</p> <p>24 Q. And you understand that one of the</p> <p>25 terms of the agreement is that it was based on</p>	<p style="text-align: right;">Page 79</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 milestones that had to be reached; is that</p> <p>3 right?</p> <p>4 MS. DANDENEAU: Objection to form.</p> <p>5 A. That was one of the words that was</p> <p>6 used when I heard about it, yes.</p> <p>7 Q. And when you heard about this</p> <p>8 agreement that had a term in it concerning</p> <p>9 milestones reached, did you ask the person who</p> <p>10 was telling you about the agreement whether or</p> <p>11 not it was in writing?</p> <p>12 A. I did not.</p> <p>13 Q. Did you ask any questions at all?</p> <p>14 MS. DANDENEAU: Objection to form.</p> <p>15 A. Not that I recall.</p> <p>16 Q. But do you understand that going</p> <p>17 forward, we're going to refer to the agreement</p> <p>18 as the agreement that you just described that</p> <p>19 you were --</p> <p>20 MS. DANDENEAU: Object to the form.</p> <p>21 A. Yes.</p> <p>22 Q. Okay. You don't have any personal</p> <p>23 knowledge concerning the terms of the</p> <p>24 agreement; correct?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>
<p style="text-align: right;">Page 80</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 form.</p> <p>3 Q. You can answer.</p> <p>4 A. I don't -- I heard about the</p> <p>5 agreement. I don't know anything -- I heard</p> <p>6 there was an agreement. That is -- again, as I</p> <p>7 testified before -- I said before, heard about</p> <p>8 it, don't know the details. I believe it was</p> <p>9 sometime this year.</p> <p>10 Q. Do you have any personal knowledge</p> <p>11 about the terms of the agreement, sir?</p> <p>12 MS. DANDENEAU: Objection to form.</p> <p>13 A. Other than what I have previously</p> <p>14 discussed, I don't -- I don't know.</p> <p>15 Q. Did -- did Mr. Dondero tell you</p> <p>16 about the existence of the agreement?</p> <p>17 A. I don't recall.</p> <p>18 Q. Do you recall the source of your</p> <p>19 information when you learned about the</p> <p>20 agreement?</p> <p>21 A. No, I don't -- I don't recall. I</p> <p>22 don't remember. I just -- I heard about it</p> <p>23 generally. I don't remember -- I don't</p> <p>24 remember who, how, if, how. I don't remember.</p> <p>25 Q. You know, Mr. Waterhouse, I just</p>	<p style="text-align: right;">Page 81</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 want to be clear that I never would have asked</p> <p>3 you to appear at this deposition if your name</p> <p>4 hadn't been included in responses to discovery</p> <p>5 as to somebody with knowledge about the -- who</p> <p>6 was told about the existence of the agreement.</p> <p>7 That is what prompted me do this,</p> <p>8 and I really do feel compelled to tell you that</p> <p>9 I otherwise would never have called you as a</p> <p>10 witness. So I regret that you're being put</p> <p>11 through this today. I had no intention of</p> <p>12 burdening you or taking your time, but that is</p> <p>13 the reason that we issued the subpoena is</p> <p>14 because certain of the defendants identified</p> <p>15 you as somebody --</p> <p>16 MS. DEITSCH-PEREZ: Mr. Morris, you</p> <p>17 are here to ask questions, not to have --</p> <p>18 MR. MORRIS: I feel badly for the</p> <p>19 guy. I really do.</p> <p>20 MS. DEITSCH-PEREZ: I'm sure you do.</p> <p>21 MR. MORRIS: I do. Stop.</p> <p>22 MS. DEITSCH-PEREZ: You stop.</p> <p>23 MR. MORRIS: I'm allowed.</p> <p>24 MS. DEITSCH-PEREZ: No, you're not</p> <p>25 allowed to have a chat with the witness.</p>

<p style="text-align: right;">Page 82</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Well, I hope that you</p> <p>3 appreciate what I'm saying here,</p> <p>4 Mr. Waterhouse.</p> <p>5 MS. DANDENEAU: All right. Let's go</p> <p>6 ahead and ask questions, and again, you're</p> <p>7 entitled to probe his -- his knowledge</p> <p>8 of -- whatever knowledge he has about</p> <p>9 this -- this agreement and --</p> <p>10 MR. MORRIS: That is what I'm doing.</p> <p>11 MS. DANDENEAU: -- he will answer</p> <p>12 the questions to the best that he can.</p> <p>13 MR. MORRIS: That is what I'm doing.</p> <p>14 Q. Mr. Waterhouse, I take it you do not</p> <p>15 know which promissory notes issued by which</p> <p>16 affiliates or Mr. Dondero are the subject of</p> <p>17 this agreement; do I have that right?</p> <p>18 A. Yes, I don't -- I don't know.</p> <p>19 Q. Do you know of any way to determine</p> <p>20 which promissory notes issued by the affiliates</p> <p>21 and Mr. Dondero are the subject of this</p> <p>22 agreement other than asking Jim or Nancy</p> <p>23 Dondero?</p> <p>24 MS. DANDENEAU: Objection to form.</p> <p>25 A. I don't know.</p>	<p style="text-align: right;">Page 83</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Did you ever make --</p> <p>3 A. I don't know anything about these</p> <p>4 agreements.</p> <p>5 Q. Did you ever make any effort to</p> <p>6 determine which promissory notes are subject to</p> <p>7 this agreement?</p> <p>8 A. No.</p> <p>9 Q. Did you ever ask anybody which</p> <p>10 promissory notes are subject to this agreement?</p> <p>11 A. No.</p> <p>12 Q. Do you know if there is a list</p> <p>13 anywhere of the promissory notes that are</p> <p>14 subject to this agreement?</p> <p>15 A. I'm not aware.</p> <p>16 Q. Have you ever seen the terms of the</p> <p>17 agreement written down anywhere?</p> <p>18 A. No.</p> <p>19 Q. Have you ever asked anybody whether</p> <p>20 the terms of the agreement were written down</p> <p>21 anywhere?</p> <p>22 A. I have not.</p> <p>23 Q. Did learning about the agreement</p> <p>24 cause you to do anything in response?</p> <p>25 MS. DANDENEAU: Objection to form.</p>
<p style="text-align: right;">Page 84</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. No.</p> <p>3 Q. Did anybody ever describe to you the</p> <p>4 nature of the milestones that you referred to</p> <p>5 earlier?</p> <p>6 A. No, I don't -- I don't have any</p> <p>7 details of this.</p> <p>8 Q. That is fine.</p> <p>9 PricewaterhouseCoopers served as</p> <p>10 Highland's outside auditors prior to the</p> <p>11 petition date; correct?</p> <p>12 A. Yes.</p> <p>13 Q. You refer to PricewaterhouseCoopers</p> <p>14 as PwC?</p> <p>15 A. Yes.</p> <p>16 Q. PricewaterhouseCoopers audited</p> <p>17 Highland's financial statements on an annual</p> <p>18 basis; correct?</p> <p>19 A. During my -- during my time as -- as</p> <p>20 CFO, yes, PricewaterhouseCoopers was the</p> <p>21 auditor.</p> <p>22 Q. Do you know why Highland had its</p> <p>23 annual financial statements audited each year?</p> <p>24 A. Generally.</p> <p>25 Q. Tell me your general understanding</p>	<p style="text-align: right;">Page 85</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 as to the reason why Highland had its annual</p> <p>3 financial statements audited each year.</p> <p>4 A. From -- from time to time, they were</p> <p>5 used -- or asked for, as part of diligence or</p> <p>6 transactions or -- or things of that nature.</p> <p>7 Q. And were they given to third parties</p> <p>8 for purposes of diligence or transactions from</p> <p>9 time to time?</p> <p>10 A. As far as I'm aware, yes.</p> <p>11 Q. And was it your understanding as the</p> <p>12 CFO that the third parties who received the</p> <p>13 financial statements in diligence or</p> <p>14 transactions was going to rely on those?</p> <p>15 MS. DANDENEAU: Objection to form.</p> <p>16 A. I don't know -- I don't know gen --</p> <p>17 I don't know specifically what they were going</p> <p>18 to rely on. You know, we would get requests</p> <p>19 for audited financial statements. I don't know</p> <p>20 what they were relying on.</p> <p>21 Q. And --</p> <p>22 A. You would have to ask them.</p> <p>23 Q. Did you personally play a role in</p> <p>24 PwC's annual audit and the conduct of the</p> <p>25 audit?</p>

<p>Page 86</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MS. DANDENEAU: Objection to form.</p> <p>3 A. During my tenure as CFO, I played a</p> <p>4 very minimal role.</p> <p>5 Q. What was the minimal role that you</p> <p>6 played?</p> <p>7 A. You know, again, it was -- it was to</p> <p>8 check in with the team, to make sure that, you</p> <p>9 know, audit -- the deadlines were being hit,</p> <p>10 information was being presented to the auditors</p> <p>11 in a -- in a timely fashion, but, you know,</p> <p>12 other than that, it was a very capable team</p> <p>13 that are still current employees of Highland</p> <p>14 and, you know, they -- they conducted 99</p> <p>15 percent of -- look, I don't want to give</p> <p>16 percentages. I mean, this is -- but I -- I --</p> <p>17 I played a minimal role towards the end.</p> <p>18 Before during my earlier years as</p> <p>19 CFO, I did more, and then as time went on, I</p> <p>20 did less in it.</p> <p>21 Q. Okay. Was there a person at</p> <p>22 Highland who was responsible for overseeing</p> <p>23 Highland's participation in PwC's audit during</p> <p>24 the time that you were the CFO?</p> <p>25 A. Yeah. I mean, there was -- there</p>	<p>Page 87</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 was a -- there was a point -- it varies. It</p> <p>3 varies by year, in function, in time and, you</p> <p>4 know, depending on the request, but yes, I</p> <p>5 mean, there is -- there is -- there is</p> <p>6 generally a point person of communication.</p> <p>7 Q. And who was the point person from</p> <p>8 2016 until the time you left Highland?</p> <p>9 A. I don't -- I don't know</p> <p>10 specifically, but it would have been, you</p> <p>11 know -- you know, someone on the corporate</p> <p>12 accounting team.</p> <p>13 Q. And was there a head of the</p> <p>14 corporate accounting team?</p> <p>15 A. Yes, so -- yes.</p> <p>16 Q. Who was the head of corporate</p> <p>17 accounting for the five years prior to the time</p> <p>18 you left Highland?</p> <p>19 A. I don't -- if you're asking from</p> <p>20 2016 on, I don't -- it was Dave Klos, but,</p> <p>21 again, there was -- there was changes to the</p> <p>22 team and the reporting structure. I don't</p> <p>23 remember exactly when that happened during --</p> <p>24 you know, over the last -- since 2016.</p> <p>25 Q. Did the folks who participated and</p>
<p>Page 88</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 ran the audit all report to you, directly or</p> <p>3 indirectly?</p> <p>4 A. Yes.</p> <p>5 Q. And did you have any responsibility</p> <p>6 for making sure that the audit report was</p> <p>7 accurate before it was finalized?</p> <p>8 A. Yeah. I mean, you know, that --</p> <p>9 that is -- my responsibility to the auditors</p> <p>10 was -- again, is -- and the CFO is to -- we are</p> <p>11 providing accurate financial statements; right?</p> <p>12 And -- and -- and as part of any</p> <p>13 audit, we disclose all relevant information as</p> <p>14 part of any audit.</p> <p>15 Q. Okay. And as the CFO, did you take</p> <p>16 steps to make sure that the audit report was</p> <p>17 accurate?</p> <p>18 A. I mean, I would say in a general</p> <p>19 sense, yes. But, again, I mean, I had a</p> <p>20 very -- I had a very capable and competent</p> <p>21 team. I wasn't managing them.</p> <p>22 You know, part of what I do is I let</p> <p>23 the team -- I want managers to grow. I want</p> <p>24 managers to have rope. And that is -- you</p> <p>25 know, I'm not a stand-behind-you type of guy.</p>	<p>Page 89</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 If you -- if you talk to my team members, I'm</p> <p>3 not micromanaging people. I want people to</p> <p>4 learn and grow in their function so they can go</p> <p>5 on and do bigger and better things with their</p> <p>6 careers.</p> <p>7 And so, yes, generally I was</p> <p>8 responsible for it, but I wanted the team to</p> <p>9 learn and grow and be responsible for the bulk</p> <p>10 of the audit.</p> <p>11 Q. Did you personally review each audit</p> <p>12 report before it was finalized to satisfy</p> <p>13 yourself that it was accurate?</p> <p>14 A. I don't -- I don't recall, you know,</p> <p>15 for every single -- we're talking 2016, there</p> <p>16 would have been three years, 2016 to '17, '18.</p> <p>17 I don't -- we're -- we're going back</p> <p>18 five years-plus. I don't -- you know, I don't</p> <p>19 recall.</p> <p>20 Q. Did you have a practice that you</p> <p>21 employed to make sure that you were satisfied</p> <p>22 that Highland's audit reports were true and</p> <p>23 accurate to the best of your knowledge?</p> <p>24 A. I mean, our -- the practice was set</p> <p>25 up with our -- the -- the practice to put</p>

<p style="text-align: right;">Page 90</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 together accurate audited or accurate financial</p> <p>3 statements is to your control environment.</p> <p>4 So, you know, the -- so the practice</p> <p>5 was to maintain a stable control environment</p> <p>6 which then the output is -- is accurate</p> <p>7 financial statements.</p> <p>8 So -- so, you know, if I was</p> <p>9 comfortable that the control environment was</p> <p>10 operating, then, you know, that would dictate</p> <p>11 how I would -- you know, what I might or might</p> <p>12 not do in a given year.</p> <p>13 Q. Okay. Do you recall ever being</p> <p>14 uncomfortable with the control environment</p> <p>15 during the period that you served as CFO?</p> <p>16 A. Yeah. I mean, look, yes, there are</p> <p>17 times -- you know, nothing is perfect. So</p> <p>18 there were -- there were times when, yes, you</p> <p>19 know -- there are times I learned I was</p> <p>20 uncomfortable with the control environment, and</p> <p>21 that is part of the management of the process</p> <p>22 and having, you know -- and -- and working</p> <p>23 through whatever obstacles present themselves.</p> <p>24 Q. Okay. Were you ever uncomfortable</p> <p>25 with the control process as it related to</p>	<p style="text-align: right;">Page 91</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 reporting and disclosures of loans to</p> <p>3 affiliates and Mr. Dondero?</p> <p>4 MS. DANDENEAU: Objection to form.</p> <p>5 A. I don't -- I don't recall --</p> <p>6 Q. So you don't recall --</p> <p>7 A. -- the --</p> <p>8 MS. DANDENEAU: Mr. Morris --</p> <p>9 A. I don't recall being uncomfortable.</p> <p>10 But, again, we're going back several years. I</p> <p>11 don't -- you know, the practice in an audit is</p> <p>12 to disclose all information to the auditors.</p> <p>13 And I don't -- I don't recall.</p> <p>14 Q. As part of the process of the audit,</p> <p>15 did you sign what is sometimes referred to as a</p> <p>16 management representation letter?</p> <p>17 A. Yes.</p> <p>18 MR. MORRIS: Can we put up on the</p> <p>19 screen a document that we have premarked as</p> <p>20 Exhibit 33.</p> <p>21 (Exhibit 33 marked.)</p> <p>22 MS. DANDENEAU: Mr. Morris, that is</p> <p>23 not in the binder; correct?</p> <p>24 MR. MORRIS: Correct.</p> <p>25 Q. So you will see, Mr. Waterhouse,</p>
<p style="text-align: right;">Page 92</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 this is a letter dated June 3rd. And if we</p> <p>3 could go to the signature page.</p> <p>4 And do you see that you and</p> <p>5 Mr. Dondero signed this document?</p> <p>6 A. Yes.</p> <p>7 Q. That is your signature; right?</p> <p>8 A. Yes.</p> <p>9 MR. MORRIS: Okay. Can you go back</p> <p>10 to the top.</p> <p>11 MS. DANDENEAU: Mr. Morris, can you</p> <p>12 have somebody post this in the chat so that</p> <p>13 we have can have a copy of this, please.</p> <p>14 MR. MORRIS: Yeah, sure. Asia, can</p> <p>15 you do that, please.</p> <p>16 Q. Okay. Do you see at the bottom of</p> <p>17 the second paragraph there is a reference to</p> <p>18 materiality?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. It says, Materiality used for</p> <p>21 purposes of these representations is</p> <p>22 \$1.7 million.</p> <p>23 Do you see that?</p> <p>24 A. I do.</p> <p>25 Q. And did PwC set that level of</p>	<p style="text-align: right;">Page 93</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 materiality?</p> <p>3 A. Yes.</p> <p>4 Q. And for purposes of the audit, did</p> <p>5 PwC set the level of materiality each year?</p> <p>6 A. Yes.</p> <p>7 Q. Did that number change over time?</p> <p>8 A. I'm not aware of what materiality is</p> <p>9 every single year, so -- but, you know, this</p> <p>10 number would likely fluctuate.</p> <p>11 Q. Okay. I'm going to go back to a</p> <p>12 question I asked you earlier today. And that</p> <p>13 is in connection -- this letter is issued in</p> <p>14 connection with the audit for the period ending</p> <p>15 12/31/2018; correct?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And is it fair to say that if</p> <p>18 any -- actually, withdrawn. I'm going to take</p> <p>19 it outside of this.</p> <p>20 If Highland ever forgave the loan to</p> <p>21 any affiliate or any of its officers or</p> <p>22 employees, in whole or in part, to the best of</p> <p>23 your knowledge, would that forgiveness have</p> <p>24 been disclosed in the audited financial</p> <p>25 statements if it exceeded the level of</p>

<p>Page 94</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 materiality that PwC established?</p> <p>3 MS. DANDENEAU: Objection to form.</p> <p>4 A. So, again, during my tenure as CFO,</p> <p>5 and -- Highland -- it was -- it is required to</p> <p>6 disclose any affiliate loans that are in excess</p> <p>7 of materiality.</p> <p>8 Now, the forgiveness of those loans</p> <p>9 may or may not -- I mean, since materiality</p> <p>10 fluctuates every year, a -- you know, if a loan</p> <p>11 was forgiven, it may or may not, you know --</p> <p>12 and, look, I would want to consult the guidance</p> <p>13 around this.</p> <p>14 It is not something we do -- you</p> <p>15 know, it is not -- you know, GAAP can be and</p> <p>16 disclosures can be very specialized so, again,</p> <p>17 we want to consult the guidance. But we would</p> <p>18 see if and what would need to be disclosed if</p> <p>19 it were deemed immaterial.</p> <p>20 Q. Did you and Mr. Dondero sign</p> <p>21 management representation letters of this type</p> <p>22 in each year in which you served as Highland's</p> <p>23 CFO?</p> <p>24 A. I -- I -- I will speak for myself.</p> <p>25 I signed them. There may have been others that</p>	<p>Page 95</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 signed as well. I don't -- I don't recall.</p> <p>3 Q. But to the best of your knowledge,</p> <p>4 you, personally, signed a management</p> <p>5 representation letter in connection with</p> <p>6 Highland's audit each year that you served as</p> <p>7 the CFO; correct?</p> <p>8 A. I would say generally speaking,</p> <p>9 Mr. Morris. I don't recall for every single</p> <p>10 year, you know, generally, but I would want to</p> <p>11 refer to all the rep letters and see who signed</p> <p>12 them.</p> <p>13 Q. Do you recall Highland having its</p> <p>14 financial statements audited in any year during</p> <p>15 the period that you were a CFO where you didn't</p> <p>16 sign the management representation letter?</p> <p>17 A. I don't recall. But, John, we're</p> <p>18 going back five, six, seven, eight, nine,</p> <p>19 decade. I don't -- I don't remember.</p> <p>20 Q. I don't want to go back that many</p> <p>21 decades, but I'm just asking you if you recall</p> <p>22 that there was you didn't sign it?</p> <p>23 A. I -- I -- I don't, but my memory</p> <p>24 is -- again, I -- I -- I can't tell you what I</p> <p>25 did in 2012. I mean, I think generally, yes,</p>
<p>Page 96</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 but I don't -- I don't know for sure, and I</p> <p>3 would want to rely on the document.</p> <p>4 Q. Let me ask the question a little bit</p> <p>5 differently then.</p> <p>6 Do you have any reason to believe</p> <p>7 that Highland had its annual financial audit</p> <p>8 and you did not sign a management</p> <p>9 representation letter in connection with that</p> <p>10 audit?</p> <p>11 MS. DANDENEAU: Objection to form.</p> <p>12 A. I don't believe it would, but,</p> <p>13 again, I would want to -- I don't recall and I</p> <p>14 would want to confirm it to -- to make, you</p> <p>15 know, an affirmative -- to give an affirmative</p> <p>16 answer.</p> <p>17 Q. Do you know whether PwC required</p> <p>18 management to sign management representation</p> <p>19 letters?</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 A. Yes. I mean, it -- management</p> <p>22 representation letters are signed by</p> <p>23 management.</p> <p>24 Q. Okay. And do you know -- do you</p> <p>25 have any understanding as to why PwC requires</p>	<p>Page 97</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 management to sign management representation</p> <p>3 letters?</p> <p>4 MS. DEITSCH-PEREZ: Object to the</p> <p>5 form.</p> <p>6 A. I don't know why PwC's -- what PwC's</p> <p>7 specific practice is. I know generally what</p> <p>8 management representation letters are.</p> <p>9 Q. Okay. Do you personally -- I'm not</p> <p>10 asking about PwC. I'm asking for you -- I'm</p> <p>11 asking about you, do you have an understanding</p> <p>12 as to why the auditor asks for management</p> <p>13 representation letters?</p> <p>14 A. Okay. So you're asking me in my</p> <p>15 personal capacity, yes, I have a general</p> <p>16 understanding of why.</p> <p>17 Q. Can you give me the general</p> <p>18 understanding that you have as to why</p> <p>19 management representation letters are required?</p> <p>20 A. They are -- they are required to --</p> <p>21 they are -- they are one of the items required</p> <p>22 in an audit to help verify completeness.</p> <p>23 Q. Do you have any -- any other</p> <p>24 understanding as to why management</p> <p>25 representation letters are required?</p>

<p style="text-align: right;">Page 98</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. That is -- that is -- other than</p> <p>3 what I said, it is -- it is -- it is required</p> <p>4 so -- to ensure that the -- you know, there</p> <p>5 is -- there is completeness in what is being</p> <p>6 audited.</p> <p>7 Q. Did you -- did you have a practice</p> <p>8 whereby you and Mr. Dondero conferred about the</p> <p>9 management representation letters before you</p> <p>10 signed them?</p> <p>11 A. No.</p> <p>12 Q. Did you have a practice --</p> <p>13 withdrawn.</p> <p>14 Do you see just the next sentence</p> <p>15 after the materiality, there is a sentence that</p> <p>16 states: We confirm, to the best of our</p> <p>17 knowledge and belief, as of June 3rd, 2019, the</p> <p>18 date of your report, the following</p> <p>19 representations made to you during your audit.</p> <p>20 Do you see that sentence?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Did you understand when you</p> <p>23 signed this letter that you were confirming the</p> <p>24 representations that followed?</p> <p>25 A. When I signed this management</p>	<p style="text-align: right;">Page 99</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 letter -- representation letter, yes.</p> <p>3 Q. Okay. Did you discuss this letter</p> <p>4 with Mr. Dondero before you signed it?</p> <p>5 A. I don't recall.</p> <p>6 Q. Do you recall if Mr. Dondero asked</p> <p>7 you any questions before he signed the letter?</p> <p>8 A. I don't recall.</p> <p>9 Q. Do you recall if you asked</p> <p>10 Mr. Dondero any questions before you signed</p> <p>11 this letter?</p> <p>12 A. I don't recall.</p> <p>13 Q. Is it fair to say that Mr. Dondero</p> <p>14 did not disclose to you the existence of the</p> <p>15 agreement that we have -- as we've defined that</p> <p>16 term prior to the time you signed this letter?</p> <p>17 MS. DANDENEAU: Objection to form.</p> <p>18 A. I don't think I understand the</p> <p>19 question. So, again, you are saying, did</p> <p>20 Mr. Dondero not disclose to me the existence of</p> <p>21 this letter?</p> <p>22 Q. No, I apologize.</p> <p>23 Did Mr. Dondero disclose to you the</p> <p>24 existence of the agreement prior to the time</p> <p>25 you signed this letter on June 3rd, 2019?</p>
<p style="text-align: right;">Page 100</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. The agreement -- the agreement that</p> <p>3 we talked about earlier?</p> <p>4 Q. Correct.</p> <p>5 A. Look, as I said earlier, the first</p> <p>6 time I heard of this agreement was sometime</p> <p>7 this year.</p> <p>8 Q. Okay. Can we turn -- let's just</p> <p>9 look at a couple of items on the list. If we</p> <p>10 can go to page 33416. Do you see in Number 35</p> <p>11 it talks about the proper recording or</p> <p>12 disclosure in the financial statements of ND</p> <p>13 relationships and transactions with related</p> <p>14 parties.</p> <p>15 Do you see that?</p> <p>16 A. I do.</p> <p>17 Q. As the CFO, do you have any</p> <p>18 understanding as to whether Dugaboy is a</p> <p>19 related party?</p> <p>20 A. I don't recall.</p> <p>21 Q. Do you know whether any of the</p> <p>22 affiliates are related parties?</p> <p>23 A. If -- if it was NexPoint, HCMFA,</p> <p>24 HCMS, HCRE, yeah, if -- if that is the</p> <p>25 affiliate definition, and there. In ASC 850 --</p>	<p style="text-align: right;">Page 101</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 again, I mean, I haven't looked at ASC 850 in</p> <p>3 quite some time, but, you know, if -- if there</p> <p>4 is a control language, you know, ASC 850, would</p> <p>5 that -- that section in GAAP would -- would</p> <p>6 pick up and define what are related parties.</p> <p>7 So, you know, like I said, if -- one</p> <p>8 of the four entities I just described, if -- if</p> <p>9 they are in that control definition of ASC 850,</p> <p>10 they would be picked up in 35D.</p> <p>11 Q. Do you -- do you have any reason to</p> <p>12 believe that they would be picked up in that</p> <p>13 definition, based on your knowledge and</p> <p>14 experience?</p> <p>15 A. I -- I believe that entities</p> <p>16 controlled under GAAP are -- are affiliates.</p> <p>17 Q. Okay. Would Mr. Dondero also</p> <p>18 qualify as a related party for purposes of</p> <p>19 Section 35D, to the best of your knowledge?</p> <p>20 A. Yeah, I don't -- I don't know. I</p> <p>21 would think -- I would have to read the code</p> <p>22 section to see if someone personally -- is it</p> <p>23 talking about related parties. So, look, if</p> <p>24 your own in control, yeah, I mean, I would have</p> <p>25 to read the section.</p>

<p>Page 102</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. To the best of your knowledge, was</p> <p>3 the existence of the agreement ever disclosed</p> <p>4 to PwC?</p> <p>5 A. I'm not -- I'm not aware.</p> <p>6 Q. Do you recall if the agreement was</p> <p>7 ever disclosed in Highland's audited financial</p> <p>8 statements?</p> <p>9 A. I don't -- I don't remember if it</p> <p>10 was in every Highland's audited financial</p> <p>11 statements during my tenure. We would have to</p> <p>12 read the financial statements to see what was</p> <p>13 disclosed, but I'm not -- I mean, as I sit here</p> <p>14 today, I'm not aware.</p> <p>15 Q. That is all I'm asking for.</p> <p>16 A. I'm not aware.</p> <p>17 Q. Can we go to the next page, please,</p> <p>18 and look at 36. 36 says, we have disclosed to</p> <p>19 you the identity of the partnership's related</p> <p>20 party relationships and all the related party</p> <p>21 relationships and transactions of which we are</p> <p>22 aware.</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. To the best of your knowledge, as of</p>	<p>Page 103</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 June 3rd, 2019, did Highland disclose to PwC</p> <p>3 the identity of the partnership's related</p> <p>4 parties and all the related party relationships</p> <p>5 and transactions of which it was aware?</p> <p>6 A. I mean, I can speak for myself as</p> <p>7 signer of this representation letter. I</p> <p>8 disclosed what -- what, you know, what --</p> <p>9 what -- what I knew. Sorry, look, yes, so I --</p> <p>10 I disclosed what I knew.</p> <p>11 Q. Okay. Can we go to page 419. Do</p> <p>12 you see at the end there is a reference to</p> <p>13 events that occurred since the end of the</p> <p>14 fiscal year and the date of the letter?</p> <p>15 A. Yes.</p> <p>16 Q. And were you aware of that -- of</p> <p>17 that provision of the management representation</p> <p>18 letter before you signed the document?</p> <p>19 A. Yes.</p> <p>20 Q. Do you have an understanding as to</p> <p>21 why PwC asked for that confirmation of that</p> <p>22 particular part of the management</p> <p>23 representation letter?</p> <p>24 A. It is -- it is -- it is just -- it</p> <p>25 is a typical audit request.</p>
<p>Page 104</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And do you understand -- do you have</p> <p>3 an understanding that PwC wanted to know that</p> <p>4 as of the date of the audit whether any</p> <p>5 material changes had occurred since the end of</p> <p>6 the fiscal year, using the definition of</p> <p>7 materiality that is in this particular</p> <p>8 management representation letter?</p> <p>9 A. It -- it is -- it is -- it is a --</p> <p>10 it is as described. It is just a poorly worded</p> <p>11 question, so it is hard for me to say yes.</p> <p>12 Q. If I asked you this, I apologize,</p> <p>13 but did you ever learn when the agreement was</p> <p>14 entered into?</p> <p>15 A. I don't -- I don't -- like I said</p> <p>16 before, I don't know or have any details of the</p> <p>17 agreement.</p> <p>18 Q. Okay. Did you ever ask anybody when</p> <p>19 the agreement was entered into?</p> <p>20 A. I did not.</p> <p>21 Q. Let's look at the audited financial</p> <p>22 statements. We will put up on the screen a</p> <p>23 document that has been premarked as Exhibit 34.</p> <p>24 (Exhibit 34 marked.)</p> <p>25 MS. DANDENEAU: And again, if Ms. La</p>	<p>Page 105</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Canty could please put that in the chat</p> <p>3 room, that would be great.</p> <p>4 MR. MORRIS: I will assure you we</p> <p>5 will put every document in the chat room.</p> <p>6 Q. Now, I'm just going to ask you</p> <p>7 questions that are related to the provisions of</p> <p>8 this report that concern the affiliate loans,</p> <p>9 but again, Mr. Waterhouse, if there is any part</p> <p>10 of the document that you need to see or that</p> <p>11 you think you might need to see in order to</p> <p>12 refresh your recollection to answer any of my</p> <p>13 questions, will you let me know that?</p> <p>14 A. Yes.</p> <p>15 Q. Because this is a pretty lengthy</p> <p>16 document, but do you see that the cover page</p> <p>17 here is the Highland consolidated financial</p> <p>18 statements for the period ending December 31st,</p> <p>19 2018?</p> <p>20 A. Yes.</p> <p>21 Q. If we can go to -- I think it is the</p> <p>22 next one, looking for PwC's signature line.</p> <p>23 MS. CANTY: I'm sorry, John, did you</p> <p>24 say something?</p> <p>25 MR. MORRIS: Yes, can we turn the</p>

<p style="text-align: right;">Page 106</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 page. I think it is 215. Yes, stop right</p> <p>3 there, just above -- I'm sorry, I want to</p> <p>4 see just the date of the report.</p> <p>5 Q. Okay. Do you see at the bottom of</p> <p>6 that page there, Mr. Waterhouse,</p> <p>7 PricewaterhouseCoopers has signed this audit</p> <p>8 report?</p> <p>9 A. Yes, I see their signature.</p> <p>10 Q. Okay. And it is the dated same day</p> <p>11 as your management representation letter; is</p> <p>12 that right?</p> <p>13 A. It is -- yes, it is the same day.</p> <p>14 Q. Was that the practice to sign the</p> <p>15 management representation letter on the same</p> <p>16 day that the audit report was signed?</p> <p>17 A. Yes, that is typical in every audit.</p> <p>18 Q. Can we just scroll down to the</p> <p>19 balance sheet on the next page.</p> <p>20 Do you see that there is a line</p> <p>21 there that says, Notes and Other Amounts Due</p> <p>22 from Affiliates?</p> <p>23 A. Yes.</p> <p>24 Q. Does that line, to the best of your</p> <p>25 knowledge, include the amounts that were due</p>	<p style="text-align: right;">Page 107</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 under the affiliate under the notes signed by</p> <p>3 the affiliates and Mr. Dondero?</p> <p>4 MR. RUKAVINA: Objection to the</p> <p>5 extent that calls for a legal conclusion.</p> <p>6 A. I mean, I would want to see the</p> <p>7 detail and the build to this \$173,398,000, but,</p> <p>8 yes, I mean, if -- if -- given what we</p> <p>9 discussed before, you know, it -- it should</p> <p>10 capture that.</p> <p>11 Q. And -- and while you were the CFO of</p> <p>12 Highland, were all notes held by Highland that</p> <p>13 were issued by an affiliate or Mr. Dondero</p> <p>14 carried as assets on Highland's balance sheets?</p> <p>15 MS. DANDENEAU: Objection to form.</p> <p>16 MS. DEITSCH-PEREZ: Object to form.</p> <p>17 A. I don't -- I don't know how else</p> <p>18 they would be carried.</p> <p>19 Q. Okay. Can you think of any -- are</p> <p>20 you aware of any promissory note issued by an</p> <p>21 affiliate or Mr. Dondero that was not carried</p> <p>22 on Highland's audited financial balance sheets?</p> <p>23 A. I'm -- I'm -- I'm not aware.</p> <p>24 Q. Okay. Are you aware of any category</p> <p>25 of asset on Highland's balance sheet in which</p>
<p style="text-align: right;">Page 108</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 any of the promissory notes issued by an</p> <p>3 affiliate or Mr. Dondero would have been</p> <p>4 included?</p> <p>5 MS. DANDENEAU: Objection to form.</p> <p>6 A. Sorry, am I aware of any asset of an</p> <p>7 affiliate being included --</p> <p>8 Q. That -- let me -- let me try again.</p> <p>9 Do you see there is a number of</p> <p>10 different assets that are described on this</p> <p>11 balance sheet?</p> <p>12 A. Yes.</p> <p>13 Q. One of the assets that is described</p> <p>14 is Notes and Other Amounts Due from Affiliates;</p> <p>15 right?</p> <p>16 A. Yes.</p> <p>17 Q. And it is reasonable to conclude</p> <p>18 that the notes from the affiliates and</p> <p>19 Mr. Dondero are included in that line item;</p> <p>20 right?</p> <p>21 A. Yes, based on this description.</p> <p>22 Again, I would want to see a build of this to</p> <p>23 100 percent confirm, but based on the</p> <p>24 description, the asset description, it is -- it</p> <p>25 is likely.</p>	<p style="text-align: right;">Page 109</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Now, does that mean absolute? I</p> <p>3 don't know.</p> <p>4 Q. Do you have any reason to believe</p> <p>5 that the promissory notes would have been</p> <p>6 carried on the balance sheet in a category</p> <p>7 other than Notes and Other Amounts Due from</p> <p>8 Affiliates?</p> <p>9 A. If they were deemed -- no. If they</p> <p>10 were deemed an affiliate, you know, under GAAP,</p> <p>11 they should be carried in that line.</p> <p>12 Otherwise, it would go into another line.</p> <p>13 Q. Okay. And do you see the total</p> <p>14 asset base as of December 31st, 2018, was</p> <p>15 approximately \$1.04 billion?</p> <p>16 A. Yes.</p> <p>17 Q. Is my math correct that the Notes</p> <p>18 and Other Amounts Due from Affiliates</p> <p>19 constituted approximately 17 percent of</p> <p>20 Highland's assets as of the end of 2018?</p> <p>21 A. Well, so how are you defining</p> <p>22 Highland?</p> <p>23 Q. Highland Capital Management, L.P.,</p> <p>24 the entity that this audit is subject to -- or</p> <p>25 the subject of.</p>

<p>Page 110</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. On a consolidated or unconsolidated</p> <p>3 basis?</p> <p>4 Q. I'm looking at the balance sheet.</p> <p>5 It is a consolidated balance sheet. Okay?</p> <p>6 Does the Notes and Other Amounts Due</p> <p>7 from Affiliates constitute approximately</p> <p>8 17 percent of the total assets of Highland</p> <p>9 Capital Management, L.P., on a consolidated</p> <p>10 basis?</p> <p>11 MS. DANDENEAU: Objection to form.</p> <p>12 A. I don't have a calculator in front</p> <p>13 of me but I will take your math, if you are</p> <p>14 taking the 173 divided by the billion.</p> <p>15 Q. Okay.</p> <p>16 A. If that is accurate, yes. But,</p> <p>17 again, on a consolidated basis.</p> <p>18 Q. And on an unconsolidated basis the</p> <p>19 percentage would be higher; correct?</p> <p>20 A. I -- no. I don't know.</p> <p>21 Q. Well, okay. That is fair.</p> <p>22 MR. MORRIS: Can we turn to</p> <p>23 page 241, please.</p> <p>24 Q. Do you see that this is a section of</p> <p>25 the audit report that is entitled Notes and</p>	<p>Page 111</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Other Amounts Due from Affiliates?</p> <p>3 A. Sorry, I can't see the -- the --</p> <p>4 Q. It is at the top.</p> <p>5 A. Notes and Other Amounts Due from</p> <p>6 Affiliates, yes, I see that. I don't -- I</p> <p>7 don't have a page number, but I'm on a page</p> <p>8 that says at the top: Notes and Other Amounts</p> <p>9 Due from Affiliates.</p> <p>10 Q. Okay. And that is the same title of</p> <p>11 the line item on the balance sheet that we just</p> <p>12 looked at; right? Notes and Other Amounts Due</p> <p>13 from Affiliates?</p> <p>14 A. Yes.</p> <p>15 Q. And is it your understanding, based</p> <p>16 on your experience and knowledge as the CFO,</p> <p>17 that this is the section of the narrative that</p> <p>18 ties into the line item that we just looked at?</p> <p>19 A. Yes.</p> <p>20 Q. And is this section of the audit</p> <p>21 report intended to describe and disclose all of</p> <p>22 the material facts concerning the Notes and</p> <p>23 Other Amounts Due from Affiliates?</p> <p>24 MS. DANDENEAU: Objection, form.</p> <p>25 A. This -- these notes -- these notes</p>
<p>Page 112</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 of the financial statements are -- the purpose</p> <p>3 is to disclose any material items in relation</p> <p>4 to that balance sheet line item.</p> <p>5 Q. Okay. And all of the information,</p> <p>6 to the best of your knowledge, that is set</p> <p>7 forth in this section of the audit report was</p> <p>8 provided by Highland; correct?</p> <p>9 A. Yes, it would have been provided by</p> <p>10 the corporate accounting team.</p> <p>11 Q. Okay. And the corporate accounting</p> <p>12 team, did that team report to you in the</p> <p>13 organizational structure?</p> <p>14 A. Yes.</p> <p>15 Q. And did you have any concerns about</p> <p>16 the controls that were in place to make sure</p> <p>17 that the information provided with respect to</p> <p>18 Notes and Other Amounts Due from Affiliates was</p> <p>19 accurate and complete?</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 A. Not that I recall.</p> <p>22 Q. Okay. Do you recall ever being</p> <p>23 concerned that any portion of the Notes and</p> <p>24 Other Amounts Due from Affiliates in any audit</p> <p>25 report was inaccurate, incomplete, or not</p>	<p>Page 113</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 reliable?</p> <p>3 A. I didn't -- I had concerns about,</p> <p>4 you know, like I talked about before, of there</p> <p>5 were -- there were potentially issues in the</p> <p>6 control environment. But as far as it relates</p> <p>7 to the audited financial statements, any -- the</p> <p>8 team would work with the auditors to disclose</p> <p>9 all -- all notes in Highland's possession.</p> <p>10 And any -- any notes that were</p> <p>11 deemed material by the auditor, right, these</p> <p>12 were disclosed in these -- in this section, you</p> <p>13 know, in -- in the notes to the consolidated</p> <p>14 financial statements as you presented.</p> <p>15 Q. Do you recall ever having a</p> <p>16 conversation with anybody at any time</p> <p>17 concerning the accuracy of the section of audit</p> <p>18 reports that relates to Notes and Other Amounts</p> <p>19 Due from Affiliates?</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 A. You know, as -- as -- I didn't have</p> <p>22 direct conversations with</p> <p>23 PricewaterhouseCoopers as I had, you know --</p> <p>24 I -- I had the team that managed this.</p> <p>25 Again, I wasn't anywhere chose to</p>

<p>Page 114</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 being the point person of this audit. And I</p> <p>3 can't recall, you know, when -- you know, I</p> <p>4 don't even know if I was ever the point person</p> <p>5 during my tenure as CFO.</p> <p>6 I don't know if PwC had any concerns</p> <p>7 when they were performing those audit</p> <p>8 procedures. They may have and they may have --</p> <p>9 and it may not have been communicated to me. I</p> <p>10 don't know.</p> <p>11 MR. MORRIS: All right. I move to</p> <p>12 strike.</p> <p>13 Q. And I'm going to ask you to listen</p> <p>14 carefully to my question.</p> <p>15 Did you -- do you recall ever having</p> <p>16 a conversation with anybody at any time</p> <p>17 concerning the accuracy of the reporting</p> <p>18 provided in the audited financial statement on</p> <p>19 the topic of Notes and Other Amounts Due?</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 A. I don't recall for this, but that</p> <p>22 doesn't mean that it didn't exist.</p> <p>23 Q. Okay. But you have no reason to</p> <p>24 believe, as you sit here right now, that you</p> <p>25 ever discussed with anybody concerns over the</p>	<p>Page 115</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 accuracy of the section of the audit reports</p> <p>3 called Notes and Other Amounts Due from</p> <p>4 Affiliates; correct?</p> <p>5 MS. DANDENEAU: Object to the form.</p> <p>6 MS. DEITSCH-PEREZ: Objection to</p> <p>7 form.</p> <p>8 A. I don't recall having any</p> <p>9 conversations. But, again, I mean, this is --</p> <p>10 this is two years ago.</p> <p>11 Q. I'm just asking for your</p> <p>12 recollection, sir.</p> <p>13 A. Yes.</p> <p>14 Q. If you don't recall, this will --</p> <p>15 A. Yeah.</p> <p>16 Q. (Overspeak) -- if you don't</p> <p>17 recall --</p> <p>18 A. Yeah, I don't -- I don't recall.</p> <p>19 Q. Do you know who was responsible for</p> <p>20 drafting the audit report?</p> <p>21 A. Are you asking the actual Highland</p> <p>22 employee responsible? I mean, it was</p> <p>23 Highland's responsibility, so, I mean, that</p> <p>24 is --</p> <p>25 Q. Right.</p>
<p>Page 116</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. -- Highland's responsibility.</p> <p>3 Highland's responsibility.</p> <p>4 Q. Who, at Highland, was responsible</p> <p>5 for drafting this section of the audit report?</p> <p>6 A. I -- I don't know the answer to</p> <p>7 that. Again, there was a team who worked on</p> <p>8 this. And I don't know, you know, whether it</p> <p>9 was the staff or the manager.</p> <p>10 Again, this is where I let the teams</p> <p>11 manage. And, you know, there may be a</p> <p>12 corporate accountant who worked on this. I</p> <p>13 just -- you know, I wasn't part of that process</p> <p>14 to give that person experience. I don't know.</p> <p>15 Q. Do you recall having any</p> <p>16 communications with anybody at any time</p> <p>17 concerning this section of the report?</p> <p>18 A. Yeah, I don't recall.</p> <p>19 Q. Do you recall whether you ever told</p> <p>20 anybody at any time that any aspect of this</p> <p>21 section of the report was inaccurate or</p> <p>22 incomplete?</p> <p>23 A. I don't recall.</p> <p>24 Q. As you sit here today, do you have</p> <p>25 any reason to believe that this section of the</p>	<p>Page 117</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 audit report is incomplete or inaccurate in any</p> <p>3 way?</p> <p>4 And I'm happy to give you a moment</p> <p>5 to -- to look at it, if you would like.</p> <p>6 MS. DANDENEAU: Objection to form.</p> <p>7 MS. DEITSCH-PEREZ: Same.</p> <p>8 A. I mean, I would have to look at -- I</p> <p>9 would have to look at the bill to the note</p> <p>10 schedule to make sure I know you presented me</p> <p>11 with materiality, but again, there might be a</p> <p>12 note as of 12/31/18 that somehow was -- was</p> <p>13 under materiality not disclosed. I don't -- I</p> <p>14 don't know. I would need more information.</p> <p>15 Q. Okay. But without more information,</p> <p>16 you have no reason to believe anything this</p> <p>17 section is inaccurate; correct?</p> <p>18 MS. DANDENEAU: Objection to form.</p> <p>19 A. I don't. I mean, you know, this was</p> <p>20 part of the audit.</p> <p>21 Q. Thank you. Now, you will see if we</p> <p>22 could scroll just a little bit more that each</p> <p>23 of the first five paragraphs concerns</p> <p>24 specifically the four affiliates that we've</p> <p>25 been discussing and Mr. Dondero.</p>

<p>Page 118</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MR. MORRIS: If we could go the</p> <p>3 other way, La Asia. We don't need Okada.</p> <p>4 We're going to have to thread the needle.</p> <p>5 Okay. Good, perfect.</p> <p>6 Q. Do you see those five paragraphs</p> <p>7 certain the four affiliates and Mr. Dondero as</p> <p>8 we've been referring to today?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And do you see at the end of</p> <p>11 every paragraph it states, quote: A fair value</p> <p>12 of a partnership's outstanding notes receivable</p> <p>13 approximates the carrying value of the notes</p> <p>14 receivable?</p> <p>15 A. Yes, I see that.</p> <p>16 Q. Do you have an understanding of what</p> <p>17 that means?</p> <p>18 A. Yes.</p> <p>19 Q. What is your understanding of that</p> <p>20 sentence?</p> <p>21 A. It is the -- again, the -- the fair</p> <p>22 value, right, which is -- which is what the --</p> <p>23 what Highland could sell that asset for. This</p> <p>24 statement is comparing the fair value of the</p> <p>25 notes to the carrying value, so the carrying</p>	<p>Page 119</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 value is the line item that you showed me</p> <p>3 earlier that is in Notes and Other Amounts Due</p> <p>4 from Affiliates.</p> <p>5 Q. Okay. Is another way to say this is</p> <p>6 that the fair market value of the notes equals</p> <p>7 the principal amount and -- withdrawn.</p> <p>8 Is the fair way to interpret this</p> <p>9 that the fair market value of the notes equals</p> <p>10 all remaining unpaid principal and interest due</p> <p>11 under the notes?</p> <p>12 MS. DANDENEAU: Object to the form.</p> <p>13 MS. DEITSCH-PEREZ: Objection, form.</p> <p>14 A. I don't know the answer to that,</p> <p>15 because I don't recall where -- where any --</p> <p>16 where -- in what line item was the interest</p> <p>17 component reported.</p> <p>18 Q. All right. Well, if we look in this</p> <p>19 audit report, you will see in the middle of the</p> <p>20 first paragraph, for example, it states that as</p> <p>21 of December 31st, 2018, total interest and</p> <p>22 principal due on outstanding promissory notes</p> <p>23 was approximately \$5.3 million.</p> <p>24 Do you see that?</p> <p>25 A. I do.</p>
<p>Page 120</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Is that the carrying value or the</p> <p>3 fair value?</p> <p>4 A. That would be the carrying value --</p> <p>5 Q. And is the last --</p> <p>6 A. -- in my opinion.</p> <p>7 Q. Okay. And it is in your opinion as</p> <p>8 the chief financial officer of Highland during</p> <p>9 the period of time that you described; right?</p> <p>10 It is an educated opinion?</p> <p>11 A. I'm reading this at face value. I'm</p> <p>12 taking that as that is carrying value.</p> <p>13 Q. Okay. And does the last sentence</p> <p>14 say that the carrying value is roughly</p> <p>15 approximate to the fair market value?</p> <p>16 MS. DANDENEAU: Objection to form.</p> <p>17 MS. DEITSCH-PEREZ: Objection, form.</p> <p>18 A. Again, this note to the financial</p> <p>19 statement is specific to notes and other</p> <p>20 amounts due from affiliates.</p> <p>21 Q. Correct.</p> <p>22 A. If the interest component is</p> <p>23 reported elsewhere on the balance sheet, you</p> <p>24 know, it -- it -- it could be off. Again, I</p> <p>25 don't have the detail. I don't know, but yes,</p>	<p>Page 121</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 look, I mean, if you -- I mean, if you are</p> <p>3 saying the 5.3 million is in the notes and</p> <p>4 other amounts due from affiliates, then the</p> <p>5 last statement is saying the fair value</p> <p>6 approximates 5.3 million. That is what that</p> <p>7 last sentence is saying.</p> <p>8 Q. Do you see in the middle of the</p> <p>9 first paragraph -- not in the middle, the next</p> <p>10 to last sentence there is a statement that the</p> <p>11 partnership will not demand payment on amounts</p> <p>12 that exceed HCMFA's excess cash availability</p> <p>13 prior to May 31st, 2021.</p> <p>14 Do you see that?</p> <p>15 A. I do.</p> <p>16 Q. Do you know when Highland agreed not</p> <p>17 to demand payment as described in that</p> <p>18 sentence?</p> <p>19 A. I don't know specifically.</p> <p>20 Q. Do you know why Highland agreed not</p> <p>21 to demand payment on HCMFA's notes until May</p> <p>22 2021?</p> <p>23 A. Yes.</p> <p>24 Q. Why was that decision made?</p> <p>25 A. You know, well, it -- it -- that</p>

<p>Page 122</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 decision was made as to not put HCMFA into a</p> <p>3 position where it didn't have sufficient assets</p> <p>4 to pay for the demand note.</p> <p>5 Q. And at the time the agreement was</p> <p>6 entered into, pursuant to which the partnership</p> <p>7 wouldn't demand payment, did HCMFA have</p> <p>8 insufficient assets to satisfy the notes if a</p> <p>9 demand had been made?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 A. I don't have HCMFA's financial</p> <p>12 statements in front of me as of 12/31/18.</p> <p>13 Q. Was there a concern that HCMFA would</p> <p>14 be unable to satisfy its demands under the</p> <p>15 notes if demand was made?</p> <p>16 MS. DANDENEAU: Objection to form.</p> <p>17 A. Well, there is -- I don't recall --</p> <p>18 I mean, there is something, right, in place to</p> <p>19 basically not demand payment until May 31, 2021</p> <p>20 as detailed here.</p> <p>21 Q. And who made the decision to enter</p> <p>22 into -- who made the decision on behalf of</p> <p>23 Highland not to demand payment until May 31st,</p> <p>24 2021?</p> <p>25 A. I'm trying to remember. I don't</p>	<p>Page 123</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 remember exactly -- I don't remember if it was</p> <p>3 myself or -- or Jim Dondero who -- who -- there</p> <p>4 was -- there was something signed, from what I</p> <p>5 recall, that -- that -- that backed up this</p> <p>6 line item in the -- in the notes I'm -- look,</p> <p>7 I'm, I'm --</p> <p>8 Q. We will get to that.</p> <p>9 A. You --</p> <p>10 Q. I'm just --</p> <p>11 A. You have -- I mean --</p> <p>12 Q. We're going to give that to you.</p> <p>13 I'm going to give that to you.</p> <p>14 A. You -- you -- you have all the</p> <p>15 documents. I don't have the documents, and</p> <p>16 that is what makes it so hard. I don't have</p> <p>17 any documents to prepare for this deposition;</p> <p>18 right? You have all -- I don't -- I don't -- I</p> <p>19 don't remember, but, you know, again, it would</p> <p>20 probably be myself or Jim.</p> <p>21 Q. Do you know if Highland received</p> <p>22 anything in return for its agreement not to</p> <p>23 make a demand for two years?</p> <p>24 A. I don't -- I don't think it referred</p> <p>25 anything.</p>
<p>Page 124</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And did you and Mr. Dondero discuss</p> <p>3 HCMFA's ability to satisfy the notes if a</p> <p>4 demand was made at the time this agreement was</p> <p>5 entered into?</p> <p>6 MS. DANDENEAU: Objection to form.</p> <p>7 A. I don't -- I don't -- I don't recall</p> <p>8 having a specific conversation, if I did, or --</p> <p>9 or David Klos.</p> <p>10 Q. Okay. I'm just asking if you recall</p> <p>11 any conversations that you had.</p> <p>12 A. I don't recall.</p> <p>13 Q. Okay. Do you know why Highland</p> <p>14 loaned the money to HCMFA that is the subject</p> <p>15 of the notes described in this paragraph?</p> <p>16 A. I don't remember specifically why</p> <p>17 5.3 million was loaned. I mean, I -- it would</p> <p>18 have to be put in the context.</p> <p>19 Q. Do you have any recollection at all</p> <p>20 as to why Highland ever loaned any money to</p> <p>21 HCMFA?</p> <p>22 A. Yes.</p> <p>23 MS. DANDENEAU: Objection to form.</p> <p>24 Q. What do you remember about that?</p> <p>25 A. There was a Highland Global</p>	<p>Page 125</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Allocation Fund, which was a -- a fund managed</p> <p>3 by Highland Capital Management Fund Advisors.</p> <p>4 There was a -- we -- I'm just telling you,</p> <p>5 there was -- there was -- there was a -- a</p> <p>6 ultimately a NAV error found in this fund while</p> <p>7 it was an open-ended fund and, you know, there</p> <p>8 were amounts owed by the advisor in -- in</p> <p>9 relation to that NAV error.</p> <p>10 There were also, for the same fund,</p> <p>11 that same fund was ongoing an</p> <p>12 open-end-to-close-end conversion, and as part</p> <p>13 of that proposal, shareholders who voted for</p> <p>14 the conversion received compensation from the</p> <p>15 advisor.</p> <p>16 Q. All right. Now, the events that</p> <p>17 you're describing occurred in the spring of</p> <p>18 2019; right?</p> <p>19 A. These started back -- I think, I</p> <p>20 mean --</p> <p>21 Q. I apologize.</p> <p>22 A. -- that -- I mean, the answer to</p> <p>23 that is no.</p> <p>24 Q. I apologize, the loans that were</p> <p>25 made in connection with the events that you're</p>

<p>Page 126</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 describing occurred in May 2019; right?</p> <p>3 MR. RUKAVINA: Objection to the</p> <p>4 extent that calls for a legal conclusion.</p> <p>5 A. I don't recall specifically what</p> <p>6 amounts of money were moved when, for what</p> <p>7 purpose.</p> <p>8 Q. Okay. Fair enough. Going to the</p> <p>9 next paragraph, do you recall that NexPoint</p> <p>10 Advisors had obtained a number of loans from</p> <p>11 Highland, and they rolled up those loans into</p> <p>12 one note in approximately 2017?</p> <p>13 A. This is for NexPoint Advisors?</p> <p>14 Q. Yes.</p> <p>15 A. I -- I mean, I don't -- I don't</p> <p>16 recall the NexPoint Advisors loan being a</p> <p>17 roll-up loan, but --</p> <p>18 Q. Do you know why?</p> <p>19 A. But, look, if you have documents</p> <p>20 that show -- I mean, look, I just don't recall.</p> <p>21 Q. Okay. That is fair. Do you know</p> <p>22 why -- do you have any recollection as to why</p> <p>23 Highland loaned money to NexPoint?</p> <p>24 A. Yes.</p> <p>25 Q. Why did High -- why do you recall --</p>	<p>Page 127</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 what is the reason you recall Highland lending</p> <p>3 money to NexPoint?</p> <p>4 A. I mean, I was just -- I just -- I</p> <p>5 just recall. I mean, I just -- I don't</p> <p>6 remember why.</p> <p>7 Q. I understand. And I'm asking you if</p> <p>8 you recall --</p> <p>9 A. Oh, why -- I thought you say --</p> <p>10 NexPoint Advisors was launching a fund which</p> <p>11 is -- I believe that the legal name is NexPoint</p> <p>12 Capital, Inc. And it -- it provided a</p> <p>13 co-invest into that fund.</p> <p>14 And, from what I remember, the --</p> <p>15 the -- that NexPoint borrowed money from</p> <p>16 Highland at the time to make that co-invest.</p> <p>17 Q. So this was an investment that</p> <p>18 NexPoint was required to make; is that right?</p> <p>19 MS. DANDENEAU: Objection to form.</p> <p>20 A. I don't know if it was required to</p> <p>21 make, I don't recall that, or if it just made</p> <p>22 it.</p> <p>23 Q. Okay. But your recollection is that</p> <p>24 NexPoint made an investment and they borrowed</p> <p>25 money from Highland to finance the investment.</p>
<p>Page 128</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Do I have that right?</p> <p>3 A. Yes.</p> <p>4 Q. How about HCRE? Do you know why</p> <p>5 HCRE borrowed money from Highland?</p> <p>6 A. I don't remember specifically.</p> <p>7 Q. Do you remember generally?</p> <p>8 A. Generally, yeah -- I mean, yes.</p> <p>9 Q. Can you tell me your general</p> <p>10 recollection as to why Highland loaned money to</p> <p>11 HCRE?</p> <p>12 A. For -- for -- for investment</p> <p>13 purposes.</p> <p>14 Q. So HCRE made the investment and it</p> <p>15 obtained a loan, or loans, from Highland in</p> <p>16 order to finance that investment or those</p> <p>17 investments.</p> <p>18 Do I have that right?</p> <p>19 A. I mean, I -- you know, generally.</p> <p>20 Q. Okay. How about Highland Management</p> <p>21 Services, Inc.?</p> <p>22 Do you have any recollection as to</p> <p>23 why HCMS borrowed money from Highland?</p> <p>24 A. Generally.</p> <p>25 Q. What is your general recollection as</p>	<p>Page 129</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 to why HCMS borrowed money from Highland?</p> <p>3 A. For -- for investment purposes.</p> <p>4 Q. So it is the same thing, HCMS wanted</p> <p>5 to make investments and it borrowed money from</p> <p>6 Highland in order to finance those investments;</p> <p>7 is that right?</p> <p>8 A. I mean, yes, generally. I mean, I</p> <p>9 can't -- I don't -- on the services, there --</p> <p>10 there are several loans in these schedules.</p> <p>11 You know, I can't remember why every single one</p> <p>12 of these were made, but I would say, yeah, I</p> <p>13 mean, generally.</p> <p>14 Q. Okay. I appreciate that.</p> <p>15 MR. MORRIS: Let's go to the page</p> <p>16 with Bates No. 251. La Asia, are you</p> <p>17 there?</p> <p>18 MS. CANTY: Sorry, John. It went</p> <p>19 out for a minute. Can you say that again.</p> <p>20 I don't know what is going on.</p> <p>21 MR. MORRIS: The page with Bates</p> <p>22 No. 251, can we go to that.</p> <p>23 MS. CANTY: Yes, sorry.</p> <p>24 MR. MORRIS: Keep going to the</p> <p>25 bottom. Yeah, there you go.</p>

<p>Page 130</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Do you see, Mr. Waterhouse, that</p> <p>3 there is a section there called Subsequent</p> <p>4 Events?</p> <p>5 A. I do.</p> <p>6 Q. And does this relate to the last</p> <p>7 sentence above the signature line on the</p> <p>8 management representation letter that we talked</p> <p>9 about earlier where you made the representation</p> <p>10 that you disclosed subsequent events?</p> <p>11 A. I mean, it relates to it, but not in</p> <p>12 its entirety.</p> <p>13 Q. Okay.</p> <p>14 MR. MORRIS: If we can scroll up to</p> <p>15 capture the entirety of this section right</p> <p>16 here.</p> <p>17 Q. And what do you mean by that, sir?</p> <p>18 MR. MORRIS: Yeah, right there.</p> <p>19 Perfect.</p> <p>20 A. There are -- there are different</p> <p>21 subsequent events in -- under GAAP. So there</p> <p>22 are -- and -- and -- so what we see in the</p> <p>23 notes to the financial statements are one type</p> <p>24 of subevent.</p> <p>25 Q. Okay. And -- and would the type of</p>	<p>Page 131</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 subsequent event relating to affiliate loans be</p> <p>3 captured in this section if they were -- if</p> <p>4 they were made after the end of the fiscal year</p> <p>5 and prior to the issuance of the audit report?</p> <p>6 A. Yes, if they were deemed material or</p> <p>7 disclosable.</p> <p>8 Q. Okay. I appreciate that.</p> <p>9 Do you see the next to the last</p> <p>10 entry there? It says, Over the course of 2019</p> <p>11 through the report date, HCMFA issued</p> <p>12 promissory notes to the partnership in the</p> <p>13 aggregate amount of \$7.4 million?</p> <p>14 A. Yes.</p> <p>15 Q. And does that refresh your</p> <p>16 recollection that those are the notes that</p> <p>17 related to the NAV error that you mentioned</p> <p>18 earlier?</p> <p>19 A. I don't -- I don't remember the</p> <p>20 exact. Again, there are -- I mentioned two</p> <p>21 line items; right?</p> <p>22 Q. Yes.</p> <p>23 A. I mean, it was the GAAP conversion</p> <p>24 process plus the -- the NAV error. I don't</p> <p>25 have the details. I don't recall specifically</p>
<p>Page 132</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 if -- you know, what -- if that 7.4 million was</p> <p>3 solely attributable to the NAV error.</p> <p>4 Q. Okay. But there is no question that</p> <p>5 Highland told PricewaterhouseCoopers that over</p> <p>6 the course of 2019 HCMFA issued promissory</p> <p>7 notes to the partnership in the aggregate</p> <p>8 amount of \$7.4 million; correct?</p> <p>9 A. In the course of the audit, we would</p> <p>10 have produced all promissory notes in our</p> <p>11 possession, including the ones that are</p> <p>12 detailed here.</p> <p>13 Q. Do you recall that you signed the</p> <p>14 two promissory notes that are referenced in</p> <p>15 that provision?</p> <p>16 MS. DANDENEAU: Objection to form.</p> <p>17 A. I didn't recall initially but I've</p> <p>18 been reminded.</p> <p>19 Q. Okay. And -- and do you recall that</p> <p>20 those notes are dated May 2nd and May 3rd,</p> <p>21 2019?</p> <p>22 A. Yes.</p> <p>23 Q. So that was just a month before the</p> <p>24 audit was completed; correct?</p> <p>25 A. Yes. I think we had a June 3rd</p>	<p>Page 133</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 date, right, if -- if my memory serves me</p> <p>3 right.</p> <p>4 Q. Yes, I will represent to you that</p> <p>5 your memory is accurate in that regard.</p> <p>6 Did anybody ever instruct you as the</p> <p>7 CFO to correct this statement that we're</p> <p>8 looking at in subsequent events?</p> <p>9 A. So let me understand. You're saying</p> <p>10 when I was CFO at Highland Capital did anyone</p> <p>11 ever ask me to correct the -- over the course</p> <p>12 of 2019 through the report date HCMFA issued</p> <p>13 promissory notes, this statement?</p> <p>14 Q. Right.</p> <p>15 A. Not that I'm aware.</p> <p>16 Q. While you were the CFO of Highland,</p> <p>17 did anybody ever tell you that that sentence</p> <p>18 was wrong?</p> <p>19 A. Not that I'm aware.</p> <p>20 Q. Highland -- withdrawn.</p> <p>21 HCMFA disclosed these notes in its</p> <p>22 own audited financial statements; right?</p> <p>23 MR. RUKAVINA: Objection, form.</p> <p>24 A. I assume that these would be</p> <p>25 material -- if these are material financial</p>

<p>Page 134</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 statements, yes, they -- they -- they should be</p> <p>3 and they were likely disclosed.</p> <p>4 Q. Now, there is no statement</p> <p>5 concerning the 2019 notes about the forbearance</p> <p>6 that we looked at in the affiliated note</p> <p>7 section of the report; right?</p> <p>8 MS. DANDENEAU: Objection to form.</p> <p>9 Q. I'll withdraw. That was bad.</p> <p>10 Do you recall when we were looking</p> <p>11 at the paragraph concerning HCMFA earlier it</p> <p>12 had that disclosure about the agreement whereby</p> <p>13 Highland wouldn't ask for demand on the -- on</p> <p>14 the HCMFA notes?</p> <p>15 A. Yes.</p> <p>16 Q. That forbearance disclosure is not</p> <p>17 made with respect to the 2019 notes; right?</p> <p>18 A. Not -- look, not that I can recall,</p> <p>19 unless -- unless it was done at a subsequent</p> <p>20 day.</p> <p>21 Q. Right. And it is not in the</p> <p>22 subsequent event section that we're looking at</p> <p>23 right now where the 2019 notes are described;</p> <p>24 right?</p> <p>25 A. Right. But this is through</p>	<p>Page 135</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 June 3rd. It could have been done on June 4th.</p> <p>3 I don't -- I don't -- I don't recall.</p> <p>4 Q. Okay.</p> <p>5 MR. MORRIS: Can we put up on the</p> <p>6 screen the HCMFA audit report. And while</p> <p>7 we're --</p> <p>8 MS. DANDENEAU: What exhibit is</p> <p>9 this?</p> <p>10 MR. MORRIS: La Asia, what number is</p> <p>11 that?</p> <p>12 MS. CANTY: 45.</p> <p>13 MR. MORRIS: So this will be marked</p> <p>14 as Exhibit 45.</p> <p>15 (Exhibit 45 marked.)</p> <p>16 MS. CANTY: Yeah, and I will put it</p> <p>17 in the chat.</p> <p>18 MS. DANDENEAU: Thank you.</p> <p>19 Q. Okay. All right. Do you see that</p> <p>20 this is the consolidated financial statements</p> <p>21 for HCMFA for the period ending 12/31/18?</p> <p>22 A. Yes.</p> <p>23 Q. As the treasurer of HCMFA at the</p> <p>24 time, did you have to sign a management</p> <p>25 representation letter similar to the one that</p>
<p>Page 136</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 we looked at earlier for Highland?</p> <p>3 A. I would imagine I would have been</p> <p>4 asked to. I don't recall if I did.</p> <p>5 Q. Do you recall ever being asked by an</p> <p>6 auditor to sign a management representation</p> <p>7 letter and then not doing it?</p> <p>8 A. No.</p> <p>9 MR. MORRIS: Can we just scroll down</p> <p>10 again. I just want to see the date of the</p> <p>11 document.</p> <p>12 A. I mean, let me -- you know, there</p> <p>13 are different versions to management</p> <p>14 representation letters I will qualify.</p> <p>15 Yes, there are certain -- from time</p> <p>16 to time auditors can make representations</p> <p>17 that -- in the rep letter that is being</p> <p>18 proposed that are inaccurate or out of scope or</p> <p>19 things like that and they've asked for</p> <p>20 signature.</p> <p>21 In that context, yes. I mean, you</p> <p>22 know -- I mean, if I have been asked to sign</p> <p>23 and make those representations and those</p> <p>24 representations are invalid, yes, I would not,</p> <p>25 I mean, I -- I wouldn't sign that.</p>	<p>Page 137</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. PricewaterhouseCoopers served</p> <p>3 as HCMFA's outside auditors as well; correct?</p> <p>4 A. Yes.</p> <p>5 Q. Do you see that this audit report is</p> <p>6 signed on June 3rd, 2019, just like the</p> <p>7 Highland audit report?</p> <p>8 A. That is correct.</p> <p>9 Q. And did the process of -- of</p> <p>10 preparing HCMFA's audit report, was that the</p> <p>11 same process that Highland followed when it did</p> <p>12 its audit report at this time?</p> <p>13 A. I mean, it is a different entity.</p> <p>14 There are different assets. You know, it --</p> <p>15 it -- it is -- as you saw, Highland's</p> <p>16 financials are on a consolidated basis. This</p> <p>17 is different, so it is under the same control</p> <p>18 environment and team.</p> <p>19 Q. Okay. I appreciate that. So the</p> <p>20 same control environment and team participated</p> <p>21 in the preparation of the audit for Highland</p> <p>22 and for HCMFA at around the same time; correct?</p> <p>23 A. Yes.</p> <p>24 MR. MORRIS: Can we go to page 17 of</p> <p>25 the report. I don't have the Bates number.</p>

<p>Page 138</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Do you see that just like</p> <p>3 Highland's audited financial report, HCMFA's</p> <p>4 audited financial report also has a section</p> <p>5 related to subsequent events?</p> <p>6 A. Yes.</p> <p>7 Q. And am I reading this correctly that</p> <p>8 just as Highland had done, HCMFA disclosed in</p> <p>9 its audited financial report a subsequent event</p> <p>10 that related to the issuance of promissory</p> <p>11 notes to Highland in the aggregate amount of</p> <p>12 \$7.4 million in 2019?</p> <p>13 A. That is what I see in the report.</p> <p>14 Q. And you were the treasurer of HCMFA</p> <p>15 at the time; right?</p> <p>16 A. Yes, to the best of my knowledge.</p> <p>17 Q. And did anybody ever tell you prior</p> <p>18 to the time of the issuance of this audit</p> <p>19 report that that sentence relating to HCMFA's</p> <p>20 2019 notes was inaccurate or wrong in any way?</p> <p>21 A. Not that I recall.</p> <p>22 Q. As you sit here right now, has</p> <p>23 anybody ever told you that that sentence is</p> <p>24 inaccurate or wrong in any way?</p> <p>25 A. Not that I recall.</p>	<p>Page 139</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. I apologize if I asked you this</p> <p>3 already, but has anybody ever told you at any</p> <p>4 time that you are not authorized to sign the</p> <p>5 promissory notes that are the subject of the</p> <p>6 sentence we're looking at?</p> <p>7 A. Not that I recall.</p> <p>8 Q. Did anybody ever tell you at any</p> <p>9 time that you had made a mistake when you</p> <p>10 signed the promissory notes that are the</p> <p>11 subject of this sentence?</p> <p>12 A. Say that again. Did anyone ever say</p> <p>13 that I made a mistake?</p> <p>14 Q. Let me ask the question again.</p> <p>15 Did anybody ever tell you at any</p> <p>16 time that you made a mistake when you signed</p> <p>17 the two promissory notes in Highland's favor on</p> <p>18 behalf of HCMFA in 2019?</p> <p>19 A. Not that I recall.</p> <p>20 MR. MORRIS: Let's just look at the</p> <p>21 promissory notes quickly. Can we please</p> <p>22 put up Document Number 1, and so this is in</p> <p>23 the pile that y'all have. We'll just go</p> <p>24 for a few more minutes and we can take our</p> <p>25 lunch break.</p>
<p>Page 140</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. All right. So I don't know if you</p> <p>3 have seen this before, sir. Do you see that</p> <p>4 this is a complaint against HCMFA?</p> <p>5 A. Yes, I am looking at it on the</p> <p>6 screen.</p> <p>7 Q. Okay. And have you ever seen this</p> <p>8 document before?</p> <p>9 A. I went through some of these</p> <p>10 documents with my counsel here yesterday.</p> <p>11 MR. MORRIS: All right. Can we go</p> <p>12 to Exhibit 1 of this document.</p> <p>13 Q. Do you see Exhibit 1 is a</p> <p>14 \$2.4 million promissory note back in 2019?</p> <p>15 A. Yeah, I found it in the book. Yes,</p> <p>16 I have it here in front of me.</p> <p>17 Q. And this is a demand note, right, if</p> <p>18 you look at Paragraph 2?</p> <p>19 A. Yes.</p> <p>20 Q. And this is a note where the maker</p> <p>21 is HCMFA, and Highland is the payee; right?</p> <p>22 A. Yes.</p> <p>23 MR. MORRIS: And if we can scroll</p> <p>24 down, can we just see Mr. Waterhouse's</p> <p>25 signature.</p>	<p>Page 141</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Is that your signature, sir?</p> <p>3 A. Yes, it is.</p> <p>4 Q. And did you sign this document on or</p> <p>5 around May 2nd, 2019?</p> <p>6 A. I don't recall specifically signing</p> <p>7 this, but this is my signature.</p> <p>8 Q. Okay. And do you recall that</p> <p>9 Highland transferred \$2.4 million to HCMFA at</p> <p>10 or around the time you signed this document?</p> <p>11 A. I don't recall specifically. I</p> <p>12 would want to, as I sit here today, go back and</p> <p>13 confirm that, but again, presumably that --</p> <p>14 that -- that did happen.</p> <p>15 Q. You wouldn't have signed this</p> <p>16 document if you didn't believe that HCMFA</p> <p>17 either received or was going to receive</p> <p>18 \$2.4 million from Highland; is that fair?</p> <p>19 A. I mean, it -- if -- if -- if there</p> <p>20 wasn't a transfer of value, yeah, I mean, you</p> <p>21 know, I would have no reason to -- to sign a</p> <p>22 note.</p> <p>23 Q. And -- and Highland wouldn't have</p> <p>24 given this note to PricewaterhouseCoopers if --</p> <p>25 withdrawn.</p>

<p>Page 142</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 HCMFA wouldn't have given this note</p> <p>3 to PricewaterhouseCoopers if it hadn't received</p> <p>4 the principal value of -- of the note in the</p> <p>5 form of a loan; correct?</p> <p>6 MR. RUKAVINA: Objection, legal</p> <p>7 conclusion, speculation and form.</p> <p>8 A. Again, we -- what we provided to PwC</p> <p>9 were, as part of the audit, any promissory</p> <p>10 notes executed and outstanding. You know, as a</p> <p>11 part of the audit, they, you know, they -- they</p> <p>12 have copies of all the bank statements,</p> <p>13 things -- things of that sort.</p> <p>14 MR. MORRIS: Okay. Can we go to</p> <p>15 Exhibit 2.</p> <p>16 (Exhibit 2 marked.)</p> <p>17 Q. Do you see that this is a promissory</p> <p>18 note dated May 3rd, 2019 in the amount of</p> <p>19 \$5 million?</p> <p>20 A. Yes.</p> <p>21 Q. Do you believe this is also a demand</p> <p>22 note if you look at Paragraph 2?</p> <p>23 A. Yes.</p> <p>24 Q. And do you see that HCMFA is the</p> <p>25 maker, and Highland is the payee?</p>	<p>Page 143</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. And if we go to the bottom, can we</p> <p>4 just confirm that that is your signature?</p> <p>5 A. Yes.</p> <p>6 Q. And together these notes are the</p> <p>7 notes that are referred to both in Highland and</p> <p>8 HCMFA's audited financial reports in the</p> <p>9 subsequent event sections; correct?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 A. They -- they -- they totaled</p> <p>12 \$7.4 million, so presumably, yes.</p> <p>13 Q. Okay. And you were authorized to</p> <p>14 sign these two notes; correct?</p> <p>15 MR. RUKAVINA: Objection, legal</p> <p>16 conclusion.</p> <p>17 A. Yeah. I mean, I'm -- I was the</p> <p>18 officer of -- of HCMFA. You know, I -- I'm not</p> <p>19 the legal expert on -- on what that -- what</p> <p>20 that confers to me or what it doesn't. I mean,</p> <p>21 that is my signature on the notes.</p> <p>22 Q. And you believed you were authorized</p> <p>23 to sign the notes; is that fair?</p> <p>24 A. I signed a lot of documents in my</p> <p>25 capacity, just because it is operational in</p>
<p>Page 144</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 nature. So, you know, to me this was just</p> <p>3 another document, to be perfectly honest.</p> <p>4 Q. Sir, would you have signed</p> <p>5 promissory notes with the principal amount of</p> <p>6 \$7.4 million if you didn't believe you were</p> <p>7 authorized to do so?</p> <p>8 MS. DANDENEAU: Objection to form.</p> <p>9 Q. Are you frozen?</p> <p>10 A. No. I'm just -- you know, it is --</p> <p>11 you know, again, I typically don't sign</p> <p>12 promissory notes, and I don't recall why I</p> <p>13 signed these, but -- you know, but I did.</p> <p>14 Q. All right. So listen carefully to</p> <p>15 my question. Would you have ever signed</p> <p>16 promissory notes with a face amount of</p> <p>17 \$7.4 million without believing that you were</p> <p>18 authorized to do so?</p> <p>19 A. No. I mean, I'm -- I'm putting my</p> <p>20 signature on there, so no.</p> <p>21 Q. Okay. And would you have signed two</p> <p>22 promissory notes obligating HCMFA to pay</p> <p>23 Highland \$7.4 million without Mr. Dondero's</p> <p>24 prior knowledge and approval?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>	<p>Page 145</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 form.</p> <p>3 A. You know, from -- from what I recall</p> <p>4 around these notes, you know, I don't recall</p> <p>5 specifically Mr. -- Mr. Dondero saying to -- to</p> <p>6 make this a loan.</p> <p>7 So my conversation with Mr. Dondero</p> <p>8 around the culmination of the NAV error as</p> <p>9 related to TerreStar which was a -- a -- I</p> <p>10 think it was a year and a half process. I</p> <p>11 don't know, it was a multi-month process, very</p> <p>12 laborious, very difficult.</p> <p>13 When we got to the end, I had a</p> <p>14 conversation with Mr. Dondero on where to, you</p> <p>15 know, basically get the funds to reimburse the</p> <p>16 fund, and I recall him saying, get the money</p> <p>17 from Highland.</p> <p>18 Q. And so he told you to get the money</p> <p>19 from Highland; is that right?</p> <p>20 A. That is what I recall -- in my</p> <p>21 conversation with him, that is -- that is what</p> <p>22 I can recall.</p> <p>23 Q. Do you know who drafted these notes?</p> <p>24 A. I don't.</p> <p>25 Q. Did you ask somebody to draft the</p>

<p>Page 146</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 notes?</p> <p>3 A. I didn't ask -- I don't specifically</p> <p>4 ask people to draft notes really. I mean,</p> <p>5 again, you know, the legal group at Highland is</p> <p>6 responsible and has always been responsible for</p> <p>7 drafting promissory notes.</p> <p>8 Q. So based on your -- based on the</p> <p>9 practice, you believe that somebody from the</p> <p>10 Highland's legal department would have drafted</p> <p>11 these notes. Do I have that right?</p> <p>12 MS. DEITSCH-PEREZ: Object to the</p> <p>13 form. John, I also asked you for the Word</p> <p>14 versions of these notes so we could look at</p> <p>15 the properties, and you have not provided</p> <p>16 them. Are you intending to?</p> <p>17 MR. MORRIS: No.</p> <p>18 Q. Can you answer my question, sir?</p> <p>19 A. Again, I --</p> <p>20 MS. DANDENEAU: Do you want him to</p> <p>21 repeat it?</p> <p>22 A. Yeah, why don't you repeat it?</p> <p>23 Q. Sure. Mr. Waterhouse, based on the</p> <p>24 practice that you have described in your</p> <p>25 understanding, do you believe that these notes</p>	<p>Page 147</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 would have been drafted by somebody in the</p> <p>3 legal department?</p> <p>4 MS. DEITSCH-PEREZ: Object to the</p> <p>5 form.</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And do you know who would</p> <p>8 have instructed -- do you have any knowledge as</p> <p>9 to who would have instructed the legal</p> <p>10 department to draft these notes?</p> <p>11 MS. DEITSCH-PEREZ: Object to the</p> <p>12 form.</p> <p>13 A. It was whoever was working -- I</p> <p>14 mean, it was likely someone on the team. I</p> <p>15 mean, I don't remember exactly on every note or</p> <p>16 every document, but, again, a lot of these</p> <p>17 things of this nature -- they're operational in</p> <p>18 nature -- were handled by the team.</p> <p>19 The team knows to -- I mean, we</p> <p>20 don't draft documents. We're not lawyers.</p> <p>21 We're not attorneys. It is not what I do or</p> <p>22 accountants do.</p> <p>23 So they are always instructed to go</p> <p>24 and -- and go to the legal team to get</p> <p>25 documents like this drafted. Also, when you go</p>
<p>Page 148</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 to the legal team, the -- you know, we always</p> <p>3 loop in compliance. And compliance -- when you</p> <p>4 go to the legal team, compliance is part of</p> <p>5 legal team. They're made aware of -- of -- of</p> <p>6 these types of transactions.</p> <p>7 Q. And do you believe that you had</p> <p>8 the -- withdrawn.</p> <p>9 Did you ever tell Mr. Dondero --</p> <p>10 (inaudible) -- did you see those?</p> <p>11 A. Sorry.</p> <p>12 MS. DEITSCH-PEREZ: I did not hear</p> <p>13 the end of that question.</p> <p>14 Q. Did you ever tell Mr. Dondero that</p> <p>15 you signed these two notes?</p> <p>16 A. I don't recall ever -- no, I don't</p> <p>17 recall having a conversation with him.</p> <p>18 Q. Did you ever discuss these two notes</p> <p>19 with him at any time?</p> <p>20 A. The conversation, I recall, was what</p> <p>21 I described earlier. And that is the only time</p> <p>22 I recall ever discussing this.</p> <p>23 Q. Okay. But the corporate accounting</p> <p>24 group had a copy of this -- of these two notes.</p> <p>25 And pursuant to the audit process, the</p>	<p>Page 149</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 corporate accounting group gave the two notes</p> <p>3 to PricewaterhouseCoopers in connection with</p> <p>4 the audit; correct?</p> <p>5 MS. DANDENEAU: Objection to form.</p> <p>6 A. Yes. I mean, that is -- yeah, I</p> <p>7 mean, they -- unless the legal team can also</p> <p>8 retain copies of items like this. I mean, I</p> <p>9 don't know everything that they would retain as</p> <p>10 well.</p> <p>11 The legal team would also, if they</p> <p>12 had documents as part of audits, turn that over</p> <p>13 to the auditors as well. So it could have been</p> <p>14 the corporate accounting team. It could be</p> <p>15 someone on the legal team.</p> <p>16 Q. All right. So you didn't -- you</p> <p>17 didn't draft this note; right?</p> <p>18 A. I -- I -- I did not.</p> <p>19 Q. But somebody at Highland did; is</p> <p>20 that fair?</p> <p>21 MS. DEITSCH-PEREZ: Object to the</p> <p>22 form.</p> <p>23 A. I don't know. I mean, we can go to</p> <p>24 the legal team. I don't -- I'm not sitting</p> <p>25 behind someone in legal. Maybe they went to</p>

<p>Page 150</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 outside counsel. I have no idea.</p> <p>3 Q. Did you have any reason to believe</p> <p>4 you weren't authorized to sign this note,</p> <p>5 either of these two notes?</p> <p>6 A. I think I have already answered that</p> <p>7 question.</p> <p>8 Q. Okay. You didn't give these notes</p> <p>9 to PricewaterhouseCoopers; correct?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 A. I don't recall giving these to</p> <p>12 PricewaterhouseCoopers.</p> <p>13 Q. And in the practice that you have</p> <p>14 described, somebody in the corporate accounting</p> <p>15 group would have given these two notes to</p> <p>16 PricewaterhouseCoopers; correct?</p> <p>17 MS. DANDENEAU: Objection to form.</p> <p>18 A. I think I've answered that. I said</p> <p>19 either the corporate accounting team or maybe</p> <p>20 the legal team.</p> <p>21 MR. MORRIS: Okay. Why don't we</p> <p>22 take our lunch break here.</p> <p>23 VIDEOGRAPHER: We're going off the</p> <p>24 record at 1:04 p.m.</p> <p>25 (Recess taken 1:04 p.m. to 1:49 p.m.)</p>	<p>Page 151</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 VIDEOGRAPHER: We are back on the</p> <p>3 record at 1:49 p.m.</p> <p>4 Q. Mr. Waterhouse, did you speak with</p> <p>5 anybody during the break about the substance of</p> <p>6 this deposition?</p> <p>7 A. I spoke to -- to Deb and Michelle.</p> <p>8 Q. About the substance of the</p> <p>9 deposition?</p> <p>10 A. Yes.</p> <p>11 Q. Can you tell me what you talked</p> <p>12 about?</p> <p>13 MS. DANDENEAU: No. We object on</p> <p>14 the basis of privilege.</p> <p>15 Q. Okay. You are going to follow your</p> <p>16 counsel's objection here?</p> <p>17 A. Yes.</p> <p>18 Q. Okay.</p> <p>19 MR. MORRIS: Can we put up on the</p> <p>20 screen Exhibit 35.</p> <p>21 (Exhibit 35 marked.)</p> <p>22 Q. Are you able to see that document,</p> <p>23 sir?</p> <p>24 A. Yes.</p> <p>25 Q. Have you ever seen an incumbency</p>
<p>Page 152</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 certificate before?</p> <p>3 A. I have.</p> <p>4 Q. Do you have a general understanding</p> <p>5 of what an incumbency certificate is?</p> <p>6 A. I have a general understanding.</p> <p>7 Q. What is your general understanding?</p> <p>8 A. You know, those -- my general</p> <p>9 understanding is that the incumbency</p> <p>10 certificate basically lists folks that can --</p> <p>11 are like authorized signers.</p> <p>12 Q. Okay. And do you see that this is</p> <p>13 an incumbency certificate for Highland Capital</p> <p>14 Management Fund Advisors, L.P.?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And if we could scroll down</p> <p>17 just a little bit, do you see that it's dated</p> <p>18 effective as of April 11th, 2019?</p> <p>19 A. Yes, I see that.</p> <p>20 Q. Okay. And is that your signature in</p> <p>21 the middle of the signature block?</p> <p>22 A. Yes, it is.</p> <p>23 Q. And by signing it, did you accept</p> <p>24 appointment as the treasurer of HCMFA effective</p> <p>25 as of April 11th, 2019?</p>	<p>Page 153</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Again, I'm not the legal -- I don't</p> <p>3 know if this makes me the treasurer or the</p> <p>4 appointment. I don't know -- I don't know</p> <p>5 that, so I don't -- I don't know if that</p> <p>6 document -- again, I think -- again, I'm not</p> <p>7 the legal expert. I think isn't there --</p> <p>8 aren't there other legal documents that detail</p> <p>9 who the officers are that could be incorporated</p> <p>10 or things like that? Again, I don't want to</p> <p>11 play armchair attorney here.</p> <p>12 Q. I'm not asking you for a legal</p> <p>13 conclusion. I'm asking you for your knowledge</p> <p>14 and understanding. When you signed this</p> <p>15 document, did you understand that you were</p> <p>16 accepting an appointment as the treasurer of</p> <p>17 HCMFA?</p> <p>18 MS. DANDENEAU: Objection to form.</p> <p>19 MS. DEITSCH-PEREZ: Objection, form.</p> <p>20 A. Again, I don't think this -- that</p> <p>21 wasn't my understanding. I don't think this</p> <p>22 makes -- this document makes me the treasurer.</p> <p>23 Q. What do you think this document --</p> <p>24 why did you sign this document?</p> <p>25 MS. DEITSCH-PEREZ: Objection to</p>

<p>Page 154</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 form.</p> <p>3 MR. MORRIS: You're objecting to the</p> <p>4 form of the question when I asked him why</p> <p>5 did you sign the document? What is the</p> <p>6 basis for the objection?</p> <p>7 MS. DEITSCH-PEREZ: Because, John, I</p> <p>8 think that it does call for a legal</p> <p>9 conclusion other than -- with him saying</p> <p>10 because somebody told me to sign this</p> <p>11 document. But if you want to go there,</p> <p>12 that is fine.</p> <p>13 MR. MORRIS: Okay.</p> <p>14 MS. DANDENEAU: I don't think --</p> <p>15 he's already said he's not a lawyer.</p> <p>16 MR. MORRIS: I'll allow the witness</p> <p>17 to answer this question.</p> <p>18 Q. Why did you sign this document, sir?</p> <p>19 A. I mean, our -- our legal group would</p> <p>20 bring by these incumbency certificates from</p> <p>21 time to time. I have no idea why they're being</p> <p>22 updated, and I was asked to sign.</p> <p>23 Q. Did you ask anybody, what is this</p> <p>24 document?</p> <p>25 A. No.</p>	<p>Page 155</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Did anybody tell you why they needed</p> <p>3 you to sign the document?</p> <p>4 A. Not that I can recall.</p> <p>5 Q. You testified earlier that you</p> <p>6 understood that you served as the acting</p> <p>7 treasurer for HCMFA; correct?</p> <p>8 A. Yes.</p> <p>9 Q. How did you become the acting</p> <p>10 treasurer of HCMFA?</p> <p>11 MS. DANDENEAU: Objection to form.</p> <p>12 A. I don't -- I don't know the legal --</p> <p>13 I don't know the legal mechanic of how I became</p> <p>14 the acting treasurer.</p> <p>15 Q. I'm not asking for the legal</p> <p>16 mechanic. I'm asking you as the person who</p> <p>17 is --</p> <p>18 MS. DANDENEAU: John, you said --</p> <p>19 MR. MORRIS: Stop.</p> <p>20 MS. DANDENEAU: -- how did you</p> <p>21 become the treasurer. That is --</p> <p>22 MR. MORRIS: Please stop.</p> <p>23 MS. DANDENEAU: That is a legal</p> <p>24 question.</p> <p>25 MR. MORRIS: I am not asking any</p>
<p>Page 156</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 legal questions, to be clear. I'm asking</p> <p>3 for this witness' understanding as to how</p> <p>4 he became the acting treasurer of HCMFA.</p> <p>5 If he doesn't know, he can say he doesn't</p> <p>6 know, but this legal stuff is nonsense, and</p> <p>7 I really object to it.</p> <p>8 Q. Sir, I'm asking you a very simple</p> <p>9 question.</p> <p>10 MS. DANDENEAU: Argumentative.</p> <p>11 Q. You testified -- you testified that</p> <p>12 you became the acting treasurer of HCM --</p> <p>13 HCMFA; correct?</p> <p>14 A. Yes.</p> <p>15 Q. How did that happen?</p> <p>16 MS. DANDENEAU: Again, object to</p> <p>17 form.</p> <p>18 MR. MORRIS: I can't wait to do this</p> <p>19 in a courtroom. Good God.</p> <p>20 Q. Go ahead, sir.</p> <p>21 A. I don't know the exact process of</p> <p>22 how that happened.</p> <p>23 Q. Do you have any idea whether signing</p> <p>24 this document was part of the process?</p> <p>25 MR. MORRIS: You know what --</p>	<p>Page 157</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MS. DANDENEAU: Objection.</p> <p>3 MR. MORRIS: -- withdrawn. You guys</p> <p>4 want to do this, I can't wait. I can't</p> <p>5 wait. This is the craziest stuff ever.</p> <p>6 MS. DANDENEAU: John, he said he's</p> <p>7 not a lawyer, and you are asking him for a</p> <p>8 legal conclusion, and he says he doesn't</p> <p>9 know, and you persist.</p> <p>10 MR. MORRIS: Okay.</p> <p>11 MS. DANDENEAU: So you can ask these</p> <p>12 questions --</p> <p>13 MR. MORRIS: Did anyone -- please</p> <p>14 stop talking.</p> <p>15 MS. DANDENEAU: -- at another</p> <p>16 point -- no, no, no, I'm entitled to talk,</p> <p>17 too; right? If you're going to make these</p> <p>18 accusations as if we're trying to stonewall</p> <p>19 you, this is not the witness to ask that</p> <p>20 question.</p> <p>21 MR. MORRIS: I can't -- I can't</p> <p>22 wait -- I can't wait to do this in a</p> <p>23 courtroom. I will just leave it at that.</p> <p>24 MS. DANDENEAU: That's right, I'm</p> <p>25 sure you can't.</p>

<p>Page 158</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Did anyone ever tell you, sir, that</p> <p>3 even though you were the acting treasurer of</p> <p>4 HCMFA, that you were not authorized to sign the</p> <p>5 two promissory notes that we looked at before</p> <p>6 lunch?</p> <p>7 A. I'm not sure I understand the</p> <p>8 question. I wasn't -- I mean, I'm -- I'm the</p> <p>9 current acting treasurer.</p> <p>10 Q. Did anybody ever tell you at any</p> <p>11 time that even though you were the acting</p> <p>12 treasurer of HCMFA, that you were not</p> <p>13 authorized to sign the two promissory notes</p> <p>14 that we looked at before lunch?</p> <p>15 MS. DANDENEAU: Objection to form.</p> <p>16 A. Not that I recall.</p> <p>17 Q. Did anybody ever tell you at any</p> <p>18 time that you were not authorized to sign the</p> <p>19 two promissory notes that we looked at before</p> <p>20 lunch?</p> <p>21 A. Not that I recall.</p> <p>22 Q. Did anybody ever tell you at any</p> <p>23 time that you should not have signed the two</p> <p>24 promissory notes that we looked at before</p> <p>25 lunch?</p>	<p>Page 159</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Not that I recall.</p> <p>3 Q. Did you ever tell anybody at any</p> <p>4 time that you weren't authorized to sign the</p> <p>5 two promissory notes that we looked at before</p> <p>6 lunch?</p> <p>7 A. Not that I recall.</p> <p>8 Q. Did you ever tell anybody at any</p> <p>9 time that you made a mistake when you signed</p> <p>10 the two promissory notes that we looked at</p> <p>11 before lunch?</p> <p>12 A. Not that I recall.</p> <p>13 Q. As you sit here right now, do you</p> <p>14 have any reason to believe that you were not</p> <p>15 authorized to sign the two documents that we</p> <p>16 looked at before lunch?</p> <p>17 MS. DANDENEAU: Objection to form.</p> <p>18 A. If -- if this is the -- the valid</p> <p>19 incumbency certificate, I mean, this does --</p> <p>20 this does detail who the signers are.</p> <p>21 Q. Okay. And looking at that document,</p> <p>22 does that give you comfort that you were</p> <p>23 authorized to sign the two promissory notes</p> <p>24 that we looked at before lunch?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>
<p>Page 160</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 form.</p> <p>3 MS. DANDENEAU: Objection, form.</p> <p>4 A. Yes.</p> <p>5 Q. As of October 20th -- withdrawn.</p> <p>6 I'm trying to take your mind back to</p> <p>7 a year ago, October 2020. Do you recall at</p> <p>8 that time that the boards of the retail funds</p> <p>9 were making inquiries about obligations that</p> <p>10 were owed by the advisors to Highland in</p> <p>11 connection with their 15(c) review?</p> <p>12 MS. DANDENEAU: Objection to form.</p> <p>13 A. I don't -- I don't recall.</p> <p>14 Q. As of October 2020, you had no</p> <p>15 reason to believe you weren't authorized to</p> <p>16 sign the two promissory notes that we just</p> <p>17 looked at; correct?</p> <p>18 MS. DANDENEAU: Objection, form.</p> <p>19 MS. DEITSCH-PEREZ: Objection to</p> <p>20 form.</p> <p>21 A. I didn't think about it in October</p> <p>22 of 2020, but I mean --</p> <p>23 Q. Did you have any reason to believe</p> <p>24 at that time that you weren't authorized to</p> <p>25 sign the two notes that we just looked at?</p>	<p>Page 161</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Not that I'm aware, no.</p> <p>3 Q. Did you have any reason to believe a</p> <p>4 year ago that you made a mistake when you</p> <p>5 signed those two notes?</p> <p>6 A. Not that I'm aware.</p> <p>7 Q. A year ago you believed that HCMFA</p> <p>8 owed Highland the unpaid principal amounts that</p> <p>9 were due under those two notes; correct?</p> <p>10 A. They're -- they're promissory notes</p> <p>11 that were -- as you presented, that were --</p> <p>12 that were executed. Whether they're valid or</p> <p>13 if there's other reasons, I didn't -- I don't</p> <p>14 know.</p> <p>15 Q. I'm not asking you whether they're</p> <p>16 valid or not. I'm asking you for your state of</p> <p>17 mind. A year ago you believed that HCMFA</p> <p>18 was -- was obligated to pay the unpaid</p> <p>19 principal amount under the two notes that you</p> <p>20 signed; correct?</p> <p>21 A. Yeah, I'm -- I'm -- yes.</p> <p>22 Q. Thank you. Are you aware -- you're</p> <p>23 aware that -- that in 2017, NexPoint issued a</p> <p>24 note in favor of Highland in the approximate</p> <p>25 amount of \$30 million; correct?</p>

<p style="text-align: right;">Page 162</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I'm -- I'm -- I'm generally aware.</p> <p>3 Q. Okay. And are you generally aware</p> <p>4 that from time to time, after the note was</p> <p>5 issued by NexPoint, that moneys were applied to</p> <p>6 principal and interest that were due under the</p> <p>7 NexPoint note?</p> <p>8 A. Yes, I'm generally aware.</p> <p>9 Q. Okay. And did anybody ever tell you</p> <p>10 that the payments that were made against the</p> <p>11 NexPoint notes were made by mistake?</p> <p>12 A. Yes.</p> <p>13 Q. And is it the one payment that we</p> <p>14 talked about earlier today?</p> <p>15 A. We talked about a lot of things</p> <p>16 today. What payment are we talking about?</p> <p>17 Q. Okay. Who told you that any payment</p> <p>18 made against the NexPoint note was made by</p> <p>19 mistake?</p> <p>20 A. D.C. Sauter.</p> <p>21 Q. When did Mr. Sauter tell you that?</p> <p>22 A. I don't -- I don't remember</p> <p>23 specifically.</p> <p>24 Q. Do you remember what payments --</p> <p>25 A. Sometime -- sometime this year.</p>	<p style="text-align: right;">Page 163</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Sometime in 2021?</p> <p>3 A. Yes.</p> <p>4 Q. Do you remember what payment he was</p> <p>5 referring to?</p> <p>6 A. It was the -- the payment made in</p> <p>7 January of 2021 or -- yeah, January of -- of</p> <p>8 this -- January of 2021.</p> <p>9 Q. Okay. So did anybody ever tell you</p> <p>10 at any time that any payment that was made</p> <p>11 against principal --</p> <p>12 A. And -- and -- and -- hold on, and it</p> <p>13 may have been other -- again, it may have been</p> <p>14 that payment or -- or there may have been what</p> <p>15 he was explaining, a misapplication of prior</p> <p>16 payments as well.</p> <p>17 Q. Can you -- can you give me any</p> <p>18 specificity -- withdrawn.</p> <p>19 Withdrawn. Can you tell me</p> <p>20 everything that Mr. Sauter told you about --</p> <p>21 about errors in relation to payments made</p> <p>22 against principal and interest due under the</p> <p>23 NexPoint note?</p> <p>24 MS. DANDENEAU: Can I just --</p> <p>25 MR. RUKAVINA: Hold on. Hold on.</p>
<p style="text-align: right;">Page 164</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 I'm going to object here, and I'm going to</p> <p>3 instruct the witness not to answer</p> <p>4 depending on the discussion that you had --</p> <p>5 Mr. Waterhouse, I'm the lawyer for</p> <p>6 NexPoint, and as everyone here knows, D.C.</p> <p>7 Sauter is in-house counsel.</p> <p>8 So if you and Mr. Sauter were having</p> <p>9 a factual discussion and him preparing his</p> <p>10 affidavit, et cetera, then go ahead and</p> <p>11 answer that. But if you were having a</p> <p>12 discussion as to our legal strategy in this</p> <p>13 lawsuit, or anything having to do with</p> <p>14 that, then do not answer that.</p> <p>15 And if you need to talk to either</p> <p>16 your counsel or me about that, then we need</p> <p>17 to have that discussion now.</p> <p>18 A. Okay. Yeah, I don't -- I don't</p> <p>19 really know how to make that distinction, so</p> <p>20 maybe I need to talk to counsel before I</p> <p>21 answer, or if I can answer.</p> <p>22 Q. Let me just ask you this question:</p> <p>23 Did -- did you have any conversation with</p> <p>24 Mr. Sauter about any payment of principal and</p> <p>25 interest prior to the time that you left</p>	<p style="text-align: right;">Page 165</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Highland's employment, or did it happen after</p> <p>3 you left Highland's employment?</p> <p>4 A. I don't -- I don't recall if -- I</p> <p>5 don't recall. I mean, it was sometime in 2021.</p> <p>6 I don't remember if it was before or after I</p> <p>7 was let go from Highland.</p> <p>8 Q. Okay. So -- so nobody told you</p> <p>9 prior to 2021 that any error or mistake was</p> <p>10 made in the application of payments against</p> <p>11 principal and interest due on the NexPoint</p> <p>12 note. Do I have that right?</p> <p>13 A. Yeah, I don't -- I don't recall this</p> <p>14 being in 2020.</p> <p>15 Q. Okay. And it didn't happen in 2019;</p> <p>16 correct?</p> <p>17 A. I don't recall that happened.</p> <p>18 Q. And it didn't happen in 2018;</p> <p>19 correct?</p> <p>20 A. I don't -- I don't recall that</p> <p>21 happening.</p> <p>22 Q. And it didn't happen in 2017;</p> <p>23 correct?</p> <p>24 A. I don't recall.</p> <p>25 Q. But -- but you believe the</p>

<p>Page 166</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 conversation took place in 2021. You just</p> <p>3 don't remember if it was before or after you</p> <p>4 left Highland's employment. Do I have that</p> <p>5 right?</p> <p>6 A. It was sometime this year. I</p> <p>7 don't -- I don't remember.</p> <p>8 Q. Okay. Did you report this</p> <p>9 conversation to Mr. Seery at any point?</p> <p>10 A. I don't believe so.</p> <p>11 Q. Did you report this conversation to</p> <p>12 anybody at DSI at any time?</p> <p>13 A. I don't recall.</p> <p>14 Q. Do you have -- you don't have a</p> <p>15 recollection of ever doing that; correct?</p> <p>16 A. Yeah, that's right. I don't recall</p> <p>17 doing that.</p> <p>18 Q. Do you recall telling anybody at</p> <p>19 Pachulski Stang about the conversation you</p> <p>20 recall with Mr. Sauter?</p> <p>21 A. No, I don't -- I don't recall.</p> <p>22 Q. Did you tell any of the independent</p> <p>23 board members about your conversation with</p> <p>24 Mr. Sauter?</p> <p>25 A. I don't recall.</p>	<p>Page 167</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Did you tell any of the employees at</p> <p>3 Highland before you left Highland's employment</p> <p>4 about this call that you had with Mr. Sauter?</p> <p>5 MS. DANDENEAU: Objection to form.</p> <p>6 A. No, I don't -- no, I don't recall.</p> <p>7 Q. NexPoint -- to the best of your</p> <p>8 knowledge, did NexPoint ever file a proof of</p> <p>9 claim against Highland to try to recover moneys</p> <p>10 that were mistakenly paid against the principal</p> <p>11 and interest due under the note?</p> <p>12 A. Okay. Hold on. You are saying did</p> <p>13 NexPoint Advisors file a proof of claim to</p> <p>14 Highland for errors related to payments under</p> <p>15 the NexPoint note to Highland?</p> <p>16 Q. Correct.</p> <p>17 A. I'm -- I'm -- I'm not -- I'm not</p> <p>18 aware.</p> <p>19 Q. Are you aware --</p> <p>20 A. I'm not the legal person here, I</p> <p>21 don't know.</p> <p>22 Q. I'm just asking for your knowledge,</p> <p>23 sir.</p> <p>24 A. Yeah, I don't know. I'm not aware.</p> <p>25 Q. Are you aware of any claim of any</p>
<p>Page 168</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 kind that NexPoint has ever made to try to</p> <p>3 recover the amounts that it contends were -- or</p> <p>4 that Mr. Sauter contend were mistakenly applied</p> <p>5 against principal and interest due under the</p> <p>6 NexPoint note?</p> <p>7 A. I'm not aware.</p> <p>8 MS. DANDENEAU: Objection to form.</p> <p>9 Q. Okay. The advisors' agreements with</p> <p>10 the retail funds are subject to annual renewal;</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. And do you participate in the</p> <p>14 renewal process each year?</p> <p>15 A. Yes.</p> <p>16 Q. What role do you play in the renewal</p> <p>17 process?</p> <p>18 A. I'm -- I'm asked by the retail board</p> <p>19 to walk-through the advisors financials.</p> <p>20 Q. And do you do that in the context of</p> <p>21 a board meeting?</p> <p>22 A. Yes, it is -- yes, it is typically</p> <p>23 done in a board meeting.</p> <p>24 Q. And do you recall the time --</p> <p>25 does -- does the renewal process happen around</p>	<p>Page 169</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 the same time each year?</p> <p>3 A. Yes, it is -- it is around the same</p> <p>4 time every year.</p> <p>5 Q. And what -- what time period of the</p> <p>6 year does the renewal process occur?</p> <p>7 A. Approximately the September</p> <p>8 timeframe.</p> <p>9 Q. During that process, in your</p> <p>10 experience, does the board typically conduct</p> <p>11 its own diligence and ask for information?</p> <p>12 A. Does the board ask for lots of -- I</p> <p>13 mean, just -- I mean, lots of information as a</p> <p>14 part of that -- that -- as part of that board</p> <p>15 meeting and that process.</p> <p>16 Q. Okay. And do you recall that the</p> <p>17 process in 2020 spilled into October?</p> <p>18 A. Yes. Yes.</p> <p>19 Q. Okay. And as part of the process in</p> <p>20 2020, the retail board asked -- asked what are</p> <p>21 referred to as 15(c) questions; right?</p> <p>22 A. I guess I don't want to be -- they</p> <p>23 asked 15(c) -- are you saying they asked 15(c)</p> <p>24 questions and this is why it went into October</p> <p>25 or --</p>

<p>Page 170</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. No, I apologize.</p> <p>3 Do you have an understanding of</p> <p>4 what -- of what 15(c) refers to in the context</p> <p>5 of the annual renewal process?</p> <p>6 A. Yes, generally.</p> <p>7 Q. All right. What is your general</p> <p>8 understanding of the term "15(c)" in the</p> <p>9 context of the annual renewal process?</p> <p>10 A. I -- I think 15(c) is the section</p> <p>11 that -- that -- you know, that -- that the</p> <p>12 board has to evaluate every year, the retail</p> <p>13 board. They have to, you know, go through,</p> <p>14 evaluate, and go through that approval process</p> <p>15 on a yearly basis.</p> <p>16 Q. Okay.</p> <p>17 MR. MORRIS: Can we put up on the</p> <p>18 screen Exhibit 36, please.</p> <p>19 (Exhibit 36 marked.)</p> <p>20 MR. MORRIS: I guess let's just</p> <p>21 start at the bottom so Mr. Waterhouse can</p> <p>22 see what is here.</p> <p>23 Q. You see this begins with an email</p> <p>24 from Blank Rome to a number of people.</p> <p>25 MR. MORRIS: And if we can scroll</p>	<p>Page 171</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 up -- keep going just a little bit.</p> <p>3 Q. You will see that there is an email</p> <p>4 from Lauren Thedford to Thomas Surgent and</p> <p>5 others where she reports that she was attaching</p> <p>6 and reproducing below additional 15(c)</p> <p>7 follow-up questions from the board.</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And do you see Question No. 2 asks</p> <p>11 whether there are any material outstanding</p> <p>12 amounts currently payable or due in the future</p> <p>13 (e.g., notes) to HCMLP by HCMFA or NexPoint</p> <p>14 Advisors or any other affiliate that provides</p> <p>15 services to the funds?</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. And -- and did you -- do you recall</p> <p>19 that in -- in October of 2020 the retail boards</p> <p>20 were asking for that information?</p> <p>21 A. I don't recall it, but there --</p> <p>22 they're obviously asking in this email.</p> <p>23 Q. Okay.</p> <p>24 MR. MORRIS: Can we scroll up a</p> <p>25 little bit, please.</p>
<p>Page 172</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And then do you see that</p> <p>3 Ms. Thedford includes you on the email string</p> <p>4 on Tuesday, October 6th, at 5:52?</p> <p>5 A. Yes.</p> <p>6 Q. And she asks you and Dave Klos and</p> <p>7 Kristin Hendrix for advice on that particular</p> <p>8 Request No. 2 that I have just read; right?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Can you tell me who</p> <p>11 Ms. Thedford is?</p> <p>12 A. She was an attorney that was in the</p> <p>13 legal group.</p> <p>14 Q. At Highland Capital Management,</p> <p>15 L.P.?</p> <p>16 A. I'm -- I'm -- I'm -- I don't</p> <p>17 remember if she was an employee of Highland or</p> <p>18 any of the advisors.</p> <p>19 Q. Okay. Do you know if she served as</p> <p>20 the corporate secretary for both HCMFA and</p> <p>21 NexPoint?</p> <p>22 A. Yes.</p> <p>23 Q. And -- okay.</p> <p>24 Do you know whether Ms. Thedford</p> <p>25 held any positions in relation to the retail</p>	<p>Page 173</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 funds as we defined that term?</p> <p>3 A. Yes.</p> <p>4 Q. What is your understanding of the</p> <p>5 positions that Ms. Thedford held at the retail</p> <p>6 funds?</p> <p>7 A. I -- I recall her being an officer.</p> <p>8 I don't recall her title.</p> <p>9 Q. Okay. Is she still an officer at</p> <p>10 any of the retail funds today?</p> <p>11 A. No.</p> <p>12 Q. Do you know when she ceased to be an</p> <p>13 officer of the retail funds?</p> <p>14 A. Approximately.</p> <p>15 Q. And when did she approximately cease</p> <p>16 to be an officer of the retail funds?</p> <p>17 A. It was in -- it was in early of</p> <p>18 2021.</p> <p>19 Q. Okay. Do you know when she became</p> <p>20 an officer of the retail funds?</p> <p>21 A. I don't recall.</p> <p>22 Q. To the best of your recollection,</p> <p>23 was she an officer of the retail funds in</p> <p>24 October of 2020?</p> <p>25 A. I believe so.</p>

<p>Page 174</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Do you know what title she</p> <p>3 held in her capacity as an officer, if any?</p> <p>4 A. I told you I don't remember.</p> <p>5 Q. Okay. So she sends this email to</p> <p>6 you at 5:52 p.m. on October 6th.</p> <p>7 And if we can scroll up to the</p> <p>8 response, you responded a minute later with a</p> <p>9 one-word answer: Yes.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. And -- and yes is -- yes was in</p> <p>13 response to the retail board's Question No. 2,</p> <p>14 right, whether there are any material</p> <p>15 outstanding amounts currently payable or due in</p> <p>16 the future?</p> <p>17 A. Yes.</p> <p>18 MR. MORRIS: And can we scroll up to</p> <p>19 see what happened next.</p> <p>20 Q. So Ms. Thedford writes back to you a</p> <p>21 few minutes later and she asks whether you</p> <p>22 could provide the amounts.</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. And then you respond further and you</p>	<p>Page 175</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 refer her to the balance sheet that was</p> <p>3 provided to the board as part of the 15(c)</p> <p>4 materials.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. And -- and did the advisors provide</p> <p>8 to the board certain balance sheets in 2020 in</p> <p>9 connection with the 15(c) review?</p> <p>10 A. Yes, they did.</p> <p>11 Q. Okay. And were the amounts that</p> <p>12 were outstanding or that were to be due in the</p> <p>13 future by the advisors to Highland included in</p> <p>14 the liability section of the balance sheet that</p> <p>15 was given to the retail board?</p> <p>16 A. Yes. Notes would be reflected as</p> <p>17 liabilities.</p> <p>18 Q. Okay. And --</p> <p>19 A. If I'm understanding your question</p> <p>20 correctly.</p> <p>21 Q. You are. And -- and -- and those</p> <p>22 liabilities you -- you were -- you believed</p> <p>23 were responsive to the retail board's question;</p> <p>24 correct?</p> <p>25 A. Yes.</p>
<p>Page 176</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. And then if we can scroll up,</p> <p>3 you see Ms. Thedford responds to you</p> <p>4 nine minutes later with a draft response.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. And she says that she is taking from</p> <p>8 the 6/30 financials certain information about</p> <p>9 amounts that were due to HCMLP and affiliates</p> <p>10 as of June 30th, 2020.</p> <p>11 Do you see that?</p> <p>12 A. I do.</p> <p>13 Q. Okay. And did you believe, as the</p> <p>14 treasurer of NexPoint and HCMFA and as the CFO</p> <p>15 of Highland, that the information that</p> <p>16 Ms. Thedford obtained from the 6/30 financials</p> <p>17 was accurate and responsive in relation to the</p> <p>18 retail fund board's question?</p> <p>19 A. I just want to make sure I</p> <p>20 understand the question.</p> <p>21 Are you saying that the financial</p> <p>22 information provided to the retail board as</p> <p>23 part of the 15(c) process, which included</p> <p>24 financial statements as of June 30th of 2021,</p> <p>25 did I feel like those were responsive to their</p>	<p>Page 177</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 questions?</p> <p>3 Q. Yes.</p> <p>4 A. Yes.</p> <p>5 Q. Thank you.</p> <p>6 MS. DEITSCH-PEREZ: John, it is not</p> <p>7 in the chat yet. Can you just make sure it</p> <p>8 gets put in there.</p> <p>9 MR. MORRIS: Sure.</p> <p>10 MS. CANTY: I put it in there. I</p> <p>11 think maybe I just sent it directly, so let</p> <p>12 me make sure it says to everyone. But I</p> <p>13 did put it in there. I will try again.</p> <p>14 MR. MORRIS: Thank you, La Asia.</p> <p>15 MS. DANDENEAU: What number is it.</p> <p>16 MR. MORRIS: What, the Bates number?</p> <p>17 MS. DEITSCH-PEREZ: No, the --</p> <p>18 this -- yeah, 36 is not in the chat.</p> <p>19 MR. MORRIS: Okay. We'll get it.</p> <p>20 MS. DANDENEAU: I think that</p> <p>21 Ms. Canty just sent it to me originally.</p> <p>22 Sorry.</p> <p>23 MR. MORRIS: Okay. We will get it</p> <p>24 there.</p> <p>25 MS. CANTY: Okay. It is there now</p>

<p>Page 178</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 for everyone.</p> <p>3 MS. DEITSCH-PEREZ: Got it. Thank</p> <p>4 you.</p> <p>5 Q. Do you recall if the proposed</p> <p>6 response that Ms. Thedford crafted was</p> <p>7 delivered to the retail board with the -- with</p> <p>8 the yellow dates having been completed?</p> <p>9 A. I don't know.</p> <p>10 MR. MORRIS: Davor, I'm going to ask</p> <p>11 that the advisors and -- the advisors of</p> <p>12 both HCMFA and NexPoint produce to me any</p> <p>13 report that was given to the retail board</p> <p>14 concerning the promissory notes at issue,</p> <p>15 including the obligations under the notes.</p> <p>16 Q. Do you know -- do you know if</p> <p>17 ultimately NexPoint informed the retail board</p> <p>18 in response to its question that NexPoint owed</p> <p>19 Highland approximately 23 or \$24 million?</p> <p>20 MS. DANDENEAU: Objection to the</p> <p>21 form.</p> <p>22 A. Sorry, are you asking, did NexPoint</p> <p>23 tell the retail board that it owed Highland?</p> <p>24 Q. Let me ask a better question,</p> <p>25 Mr. Waterhouse.</p>	<p>Page 179</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Did -- do you know if anybody ever</p> <p>3 answered the retail board's question that was</p> <p>4 Number 2?</p> <p>5 A. I don't -- I can't say for sure.</p> <p>6 Q. Okay. Do you recall -- I think you</p> <p>7 testified earlier that you walked through the</p> <p>8 advisors' financials with the retail board;</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. And as part of that process, did you</p> <p>12 disclose to the retail board the obligations</p> <p>13 that NexPoint and HCMFA had to Highland under</p> <p>14 promissory notes?</p> <p>15 A. The retail board, as I stated</p> <p>16 earlier, receives financial information,</p> <p>17 balance sheet, income statement information</p> <p>18 from the advisors. That information is</p> <p>19 provided to the retail board in connection with</p> <p>20 the 15(c) process.</p> <p>21 So any notes between the advisors</p> <p>22 and the Highland would be -- anything would be</p> <p>23 detailed in those financial statements.</p> <p>24 Q. Do you recall in 2020 ever speaking</p> <p>25 with the retail board about the advisors'</p>
<p>Page 180</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 obligations under the notes to Highland?</p> <p>3 MS. DANDENEAU: Objection to form.</p> <p>4 MS. DEITSCH-PEREZ: Object to the</p> <p>5 form.</p> <p>6 A. I don't recall specifically.</p> <p>7 Q. Do you have any general recollection</p> <p>8 of discussing with the retail board the</p> <p>9 advisors' obligations to Highland under the</p> <p>10 notes that they issued?</p> <p>11 MS. DANDENEAU: Object to the form.</p> <p>12 MS. DEITSCH-PEREZ: Object to the</p> <p>13 form.</p> <p>14 A. I just recall generally just -- it</p> <p>15 is just -- I present the financial statements,</p> <p>16 and if they have questions, I answer their</p> <p>17 questions and walk them through.</p> <p>18 I don't recall what they asked. I</p> <p>19 don't recall where the discussion went. I</p> <p>20 don't recall anything of that nature.</p> <p>21 Q. Okay. Do you know if anybody on</p> <p>22 behalf of HCMF -- HCMFA ever told the retail</p> <p>23 board that HCMFA had no obligations under the</p> <p>24 two 2019 notes that you signed? Withdrawn.</p> <p>25 Do you know whether anybody on</p>	<p>Page 181</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 behalf of HCMFA ever told the retail boards</p> <p>3 that you weren't authorized to sign either of</p> <p>4 the two 2019 notes?</p> <p>5 MS. DANDENEAU: Objection to form.</p> <p>6 A. I'm not aware.</p> <p>7 Q. Are you aware of anybody on behalf</p> <p>8 of HCMFA ever telling the retail boards that</p> <p>9 your execution of the two 2019 notes was a</p> <p>10 mistake?</p> <p>11 MS. DANDENEAU: Objection to form.</p> <p>12 A. I'm not aware.</p> <p>13 Q. Are you aware of anybody on behalf</p> <p>14 of HCMFA ever telling the retail boards that</p> <p>15 HCMFA did not have to pay the amounts reflected</p> <p>16 in the two notes that you signed in 2019?</p> <p>17 A. I'm not aware.</p> <p>18 Q. Do you know whether anybody ever</p> <p>19 told the retail boards -- withdrawn.</p> <p>20 Do you know whether anybody ever</p> <p>21 told the retail boards that Highland has</p> <p>22 commenced a lawsuit to recover on the two notes</p> <p>23 that you signed in 2019?</p> <p>24 A. I'm not aware.</p> <p>25 Q. Are you aware of anybody informing</p>

<p>Page 182</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 the retail boards that Highland has sued to</p> <p>3 recover on the NexPoint note?</p> <p>4 A. I'm not aware.</p> <p>5 Q. Do you know whether anybody ever</p> <p>6 told the retail board that Highland had</p> <p>7 declared a default with respect to the two</p> <p>8 HCMFA notes that you signed in 2019?</p> <p>9 A. I'm not aware.</p> <p>10 Q. Are you aware of anybody ever</p> <p>11 informing the retail boards that Highland had</p> <p>12 declared a default under the NexPoint note?</p> <p>13 A. I'm not aware.</p> <p>14 Q. Are you aware of anybody telling the</p> <p>15 retail board that Highland made a demand for</p> <p>16 payment under the 2019 notes that you signed on</p> <p>17 behalf of HCMFA?</p> <p>18 A. I'm not aware.</p> <p>19 Q. Let's -- let's see if there is a</p> <p>20 response to Ms. Thedford's email, if we can</p> <p>21 scroll up.</p> <p>22 Do you see you responded to</p> <p>23 Ms. Thedford five minutes after she provided</p> <p>24 the draft response to you?</p> <p>25 A. Yes.</p>	<p>Page 183</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. And do you see that Dustin</p> <p>3 Norris is copied on this email?</p> <p>4 A. Yes, he is.</p> <p>5 Q. Great. Do you know whether</p> <p>6 Mr. Norris held any positions at either of the</p> <p>7 advisors as of October 6, 2020?</p> <p>8 A. I will go back to -- I'm not the</p> <p>9 legal expert of what appoints you or how or</p> <p>10 why, but you did see Dustin's name on the</p> <p>11 incumbency certificate that you produced</p> <p>12 earlier.</p> <p>13 Q. Do you know what his title was in</p> <p>14 October of 2020?</p> <p>15 MS. DANDENEAU: Objection to form.</p> <p>16 A. I don't -- I don't recall.</p> <p>17 Q. Was he -- did he have a title with</p> <p>18 each of the advisors, to the best of your</p> <p>19 recollection?</p> <p>20 A. I don't recall.</p> <p>21 Q. Do you know why he is included on</p> <p>22 this email string?</p> <p>23 A. I didn't add Dustin. It looks like</p> <p>24 Lauren did. I don't know why she added him or</p> <p>25 not. You would have to ask her.</p>
<p>Page 184</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Does Mr. Norris play a role in</p> <p>3 formulating the advisors' responses to the</p> <p>4 questions asked by the retail board in</p> <p>5 connection with the 15(c) annual review?</p> <p>6 MS. DANDENEAU: Objection to form.</p> <p>7 A. He -- Dustin Norris is there in the</p> <p>8 board meetings. But -- so he has a role, yes.</p> <p>9 Q. Okay. And does Mr. Norris hold any</p> <p>10 positions, to the best of your knowledge, in</p> <p>11 relation to any of the retail funds?</p> <p>12 A. I don't -- I don't believe he does.</p> <p>13 Q. How about Mr. Post, do you know</p> <p>14 whether Mr. Post holds any position in either</p> <p>15 of the advisors?</p> <p>16 A. I mean, he -- he -- yes.</p> <p>17 Q. What is your understanding of the</p> <p>18 positions that Mr. Post holds in relation to</p> <p>19 the advisors?</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 A. He is an employee of NexPoint</p> <p>22 Advisors. He is also the chief compliance</p> <p>23 officer for -- for NexPoint.</p> <p>24 Q. Who is the chief compliance officer</p> <p>25 for HCMFA, if you know?</p>	<p>Page 185</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MS. DANDENEAU: Objection to form.</p> <p>3 A. That would be Jason as well.</p> <p>4 Q. Okay. Now, looking at your</p> <p>5 response, you noted initially that nothing was</p> <p>6 owed under shared services. Do I have that</p> <p>7 right in substance?</p> <p>8 A. Yeah. I think I'm being responsive</p> <p>9 to Lauren's question here, whether any of the</p> <p>10 shared service invoices are outstanding.</p> <p>11 Q. Right.</p> <p>12 A. Yes.</p> <p>13 Q. And that is because -- and that is</p> <p>14 because the retail the retail board has asked</p> <p>15 for the disclosure of all material obligations</p> <p>16 that were owed to HCMLP either then or in the</p> <p>17 future; isn't that right?</p> <p>18 MS. DANDENEAU: Objection to form.</p> <p>19 Q. We can go back down and look.</p> <p>20 A. Look, I don't know if that's a</p> <p>21 material item, I mean, again, but sure.</p> <p>22 Q. Okay. But there were no shared</p> <p>23 services outstanding; correct?</p> <p>24 MS. DANDENEAU: Objection to form.</p> <p>25 A. That is what this email seems to</p>

<p>Page 186</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 indicate.</p> <p>3 Q. And you wouldn't have written it if</p> <p>4 you didn't believe it to be true at the time;</p> <p>5 correct?</p> <p>6 A. Correct.</p> <p>7 Q. And when you referred to shared</p> <p>8 services outstanding, what you meant there was</p> <p>9 that neither NexPoint nor HCMFA owed Highland</p> <p>10 any money under the shared services agreements</p> <p>11 that they had with Highland as of October 6th,</p> <p>12 2020; right?</p> <p>13 A. I don't know if it is as of October</p> <p>14 6, 2020 or if it was from -- like through the</p> <p>15 financials -- through the date of the</p> <p>16 financials as of June 30.</p> <p>17 Q. Okay. And then you noted that</p> <p>18 HCMA -- the HCMFA note is a demand note; right?</p> <p>19 A. Yes.</p> <p>20 Q. And then you referred Ms. Thedford</p> <p>21 to Kristin Hendrix for the term of the NexPoint</p> <p>22 note. Do I have that right?</p> <p>23 A. Yes.</p> <p>24 Q. And then you refer to that agreement</p> <p>25 that is referenced in the 2018 audited</p>	<p>Page 187</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 financials about Highland's agreement not to</p> <p>3 make demand upon HCMFA until May 2021; correct?</p> <p>4 A. Correct.</p> <p>5 Q. And then -- and then the next thing</p> <p>6 you write is that the attorneys think that BK</p> <p>7 doesn't change that, but don't know for sure at</p> <p>8 the end of the day.</p> <p>9 Do you see that sentence?</p> <p>10 A. Yes.</p> <p>11 Q. Which attorneys were you referring</p> <p>12 to?</p> <p>13 A. I don't remember.</p> <p>14 Q. Did you have a conversation with</p> <p>15 attorneys concerning whether the bankruptcy</p> <p>16 would change or alter in any way the agreement</p> <p>17 not to make a demand under the HCMFA note?</p> <p>18 A. Look, yeah, I mean, I don't</p> <p>19 specifically remember, but generally, I mean,</p> <p>20 it is in this email. I don't -- I don't -- I</p> <p>21 don't -- I don't remember who I talked to or,</p> <p>22 you know, was it inside counsel, outside</p> <p>23 counsel, but obviously I talked to somebody.</p> <p>24 Q. Do you have any recollection --</p> <p>25 A. Well, I don't even know if it's --</p>
<p>Page 188</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 actually, it may not even have been me. I say</p> <p>3 the attorneys in, you know, a lot of -- like I</p> <p>4 talked about the team.</p> <p>5 It could have been someone on the</p> <p>6 team, like, hey, we need to run this down, and</p> <p>7 maybe they talked to attorneys again and</p> <p>8 relayed that information to me.</p> <p>9 So I really don't know if I spoke or</p> <p>10 someone else did or -- or, I mean, and maybe it</p> <p>11 wasn't even from corporate accounting. Maybe</p> <p>12 it was, you know, other -- I'm kind of</p> <p>13 summarizing, you know, again, so I don't really</p> <p>14 know -- I can't really say for sure. I don't</p> <p>15 remember how I came about of this knowledge.</p> <p>16 Q. I appreciate your efforts,</p> <p>17 Mr. Waterhouse, but I will just tell you that</p> <p>18 if I ask a question and you don't know the</p> <p>19 answer or you don't recall, I'm happy to accept</p> <p>20 that. I don't -- I don't want you to</p> <p>21 speculate, so I want to be clear about that.</p> <p>22 So I appreciate it.</p> <p>23 Let me just ask you simply: Do you</p> <p>24 know what attorneys -- can you identify any of</p> <p>25 the attorneys who thought that the bankruptcy</p>	<p>Page 189</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 process didn't change the agreement?</p> <p>3 A. I don't recall.</p> <p>4 Q. Okay. Perfect.</p> <p>5 And then let's look at the last</p> <p>6 sentence. It says, quote: The response should</p> <p>7 include, as I covered in the board meeting,</p> <p>8 that both entities have the full faith and</p> <p>9 backing from Jim Dondero, and to my knowledge</p> <p>10 that hasn't changed.</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Prior to October 6th, 2020,</p> <p>14 had you told the retail board that HCMFA and</p> <p>15 NexPoint have the full faith and backing from</p> <p>16 Jim Dondero?</p> <p>17 A. Yes.</p> <p>18 Q. Do you remember in the context in</p> <p>19 which you told the retail board that?</p> <p>20 A. I mean, generally, yes.</p> <p>21 Q. Tell me what you recall.</p> <p>22 A. So we were walking through the</p> <p>23 financials from the advisors; right? So as I</p> <p>24 described to you, you have got HCMFA and NPA.</p> <p>25 And these -- the financials, you know, show</p>

<p>Page 190</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 they have liabilities on them that exceed</p> <p>3 assets.</p> <p>4 So the retail board has asked, okay,</p> <p>5 you know, how -- you know, if -- if these</p> <p>6 liabilities come due or they're payable, you</p> <p>7 know, how does that come about?</p> <p>8 And, you know, the response is,</p> <p>9 well, the advisors have the -- the full faith</p> <p>10 and backing from -- from Jim Dondero.</p> <p>11 Q. And how did you know that the</p> <p>12 advisors had the full faith and backing from</p> <p>13 Jim Dondero? What was the basis for that</p> <p>14 statement that you made to the retail board?</p> <p>15 A. I talked to Jim about it at some</p> <p>16 point in the past.</p> <p>17 Q. And did you tell Mr. Dondero that</p> <p>18 you were going to inform the retail board that</p> <p>19 the advisors had his full faith and backing</p> <p>20 before you actually told that to the retail</p> <p>21 board?</p> <p>22 A. I don't recall having that</p> <p>23 conversation.</p> <p>24 Q. Do you recall if you ever informed</p> <p>25 Mr. Dondero that you had disclosed or told the</p>	<p>Page 191</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 retail board that the advisors had the full</p> <p>3 faith and backing of Mr. -- Mr. Dondero?</p> <p>4 MS. DEITSCH-PEREZ: Object to the</p> <p>5 form.</p> <p>6 A. I don't recall discussing that with</p> <p>7 him at the time.</p> <p>8 Q. When you told this to the board, was</p> <p>9 Mr. Dondero participating in the discussion?</p> <p>10 A. Not that I recall.</p> <p>11 Q. Withdrawn. Was it not -- withdrawn.</p> <p>12 Do you recall whether -- when you</p> <p>13 covered this issue with the board, was that in</p> <p>14 a -- a Zoom call or a Webex call? Was it a</p> <p>15 telephone call? Was it in-person? Like where</p> <p>16 were you physically in relation to the board?</p> <p>17 A. I believe I was at home.</p> <p>18 Q. Okay. Can you identify every person</p> <p>19 that you recall who was present for this</p> <p>20 disclosure other than -- other than the board</p> <p>21 members themselves?</p> <p>22 MS. DEITSCH-PEREZ: Object to the</p> <p>23 form.</p> <p>24 A. I don't recall everyone on the call.</p> <p>25 Q. Can you identify anybody who was on</p>
<p>Page 192</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 the call?</p> <p>3 A. Other than the board members?</p> <p>4 Q. Yes.</p> <p>5 A. Lauren Thedford. I mean, there</p> <p>6 are -- there are many -- my section is just one</p> <p>7 of many sections that are just -- you know, as</p> <p>8 you can appreciate, this is a long board</p> <p>9 meeting.</p> <p>10 I can't recall specifically, really</p> <p>11 even generally, or who was on when this was</p> <p>12 discussed. But Lauren was typically on for the</p> <p>13 entire time.</p> <p>14 Q. I apologize if I asked you this, but</p> <p>15 do either of Mr. Norris or Mr. Post hold any</p> <p>16 positions relative to the retail funds?</p> <p>17 A. I think you asked me this already,</p> <p>18 John.</p> <p>19 Q. Okay. I just don't recall. Can you</p> <p>20 just refresh my recollection if I did, in fact,</p> <p>21 ask you the question?</p> <p>22 A. I don't believe -- if we can go</p> <p>23 back. I don't believe Mr. Norris has a title</p> <p>24 at the retail funds. Mr. -- and Mr. Post is</p> <p>25 the CCO of the advisor, the advisors.</p>	<p>Page 193</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Do you know if either of them</p> <p>3 have a position with the retail board -- with</p> <p>4 the retail funds?</p> <p>5 A. I don't believe Mr. Norris has a</p> <p>6 position with the retail funds.</p> <p>7 Q. All right. What about Mr. Post?</p> <p>8 A. Mr. Post is the CCO of the advisors.</p> <p>9 Q. Okay. Does he hold any position --</p> <p>10 A. I don't believe so.</p> <p>11 Q. -- with the retail funds?</p> <p>12 A. I don't believe so.</p> <p>13 Q. Okay.</p> <p>14 A. I don't know if being the CCO for</p> <p>15 the advisor conveys something for the retail</p> <p>16 funds. Again, I am not -- that is the legal</p> <p>17 compliance part of it. I don't know.</p> <p>18 Q. Why did you tell the retail board</p> <p>19 that the advisors have the full faith and</p> <p>20 backing from Mr. Dondero?</p> <p>21 MS. DANDENEAU: Objection to form.</p> <p>22 A. It is -- it is -- it is what has</p> <p>23 been discussed with them prior.</p> <p>24 Q. And were you -- were you trying to</p> <p>25 give them comfort that even though the</p>

<p>Page 194</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 liabilities exceeded the assets that the</p> <p>3 advisors would still be able to meet their</p> <p>4 obligations as they become due?</p> <p>5 MS. DANDENEAU: Objection to form.</p> <p>6 MS. DEITSCH-PEREZ: Object form.</p> <p>7 A. I -- I can't -- I don't remember</p> <p>8 specifically the conversation, but generally --</p> <p>9 you know, generally, yes. And that is why --</p> <p>10 but, you know, again, in this email saying, you</p> <p>11 know, I am sure I qualified it with the retail</p> <p>12 board, you know, as I said I like -- you know,</p> <p>13 to my knowledge, that hasn't changed. But,</p> <p>14 again, generally -- generally that is what I</p> <p>15 remember.</p> <p>16 Q. Okay. Do you recall if in the</p> <p>17 advisors' response to the retail board's</p> <p>18 question if the response included any statement</p> <p>19 concerning Mr. Dondero and -- and the full</p> <p>20 faith and backing that he was giving to the</p> <p>21 advisors?</p> <p>22 MS. DEITSCH-PEREZ: Object to the</p> <p>23 form.</p> <p>24 A. I don't -- I don't remember</p> <p>25 specifically what was provided.</p>	<p>Page 195</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay.</p> <p>3 A. And I don't really -- I don't really</p> <p>4 remember generally either.</p> <p>5 Q. Okay.</p> <p>6 MR. MORRIS: So -- so, again, I'm</p> <p>7 just going to ask Mr. Rukavina if your</p> <p>8 clients can produce as soon as possible the</p> <p>9 15(c) response, the written response that</p> <p>10 the advisors made, if any, to the board's</p> <p>11 Question No. 2.</p> <p>12 I'm not looking for the whole</p> <p>13 response, but I certainly want the response</p> <p>14 to Question No. 2.</p> <p>15 Q. Do you have a general understanding</p> <p>16 as to the amount by which -- withdrawn.</p> <p>17 Did -- did the assets of --</p> <p>18 withdrawn.</p> <p>19 Did the liabilities of HCMFA exceed</p> <p>20 its assets in 2020?</p> <p>21 MS. DANDENEAU: Objection to form.</p> <p>22 MS. DEITSCH-PEREZ: Objection, form.</p> <p>23 A. I believe I have already answered</p> <p>24 that question earlier, I think. I believe I</p> <p>25 said yes.</p>
<p>Page 196</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. And did the liabilities of</p> <p>3 NexPoint exceed its assets in 2020?</p> <p>4 MS. DEITSCH-PEREZ: Objection to</p> <p>5 form.</p> <p>6 A. I don't believe so.</p> <p>7 Q. Okay. So -- so it was only one of</p> <p>8 the two advisors who had liabilities that</p> <p>9 exceeded the value of the assets.</p> <p>10 Do I have that right?</p> <p>11 MS. DEITSCH-PEREZ: Objection to</p> <p>12 form.</p> <p>13 MS. DANDENEAU: Form.</p> <p>14 A. Yes.</p> <p>15 Q. And do you know, ballpark, the</p> <p>16 amount by which the value of HCMFA's</p> <p>17 liabilities exceeded their assets in 2020?</p> <p>18 MS. DANDENEAU: Objection to form.</p> <p>19 A. I don't -- I don't recall.</p> <p>20 MR. MORRIS: I had specifically</p> <p>21 requested in discovery the audited</p> <p>22 financial reports for both advisors and</p> <p>23 NexPoint. I think I may have gotten one</p> <p>24 for NexPoint but I'm still waiting for the</p> <p>25 balance. And I'm going to renew my request</p>	<p>Page 197</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 for those documents too.</p> <p>3 Q. Let's go to the next exhibit, which</p> <p>4 is Number 10. So I think it is in your stack,</p> <p>5 Mr. Waterhouse.</p> <p>6 MR. MORRIS: And we can take the one</p> <p>7 down from the screen and put up Number 10</p> <p>8 for everybody.</p> <p>9 (Exhibit 10 marked.)</p> <p>10 Q. And I don't know if you have ever</p> <p>11 seen this before, but I'm really putting it up</p> <p>12 on the screen for purposes of turning to the</p> <p>13 very last page of the document.</p> <p>14 So this is a document that we have</p> <p>15 been -- that we premarked as Exhibit 10. And</p> <p>16 we're turning to the last page of the document,</p> <p>17 which is a document that was filed in the</p> <p>18 adversary proceeding 21-3004. And -- no, I</p> <p>19 apologize, I think we -- right there. Perfect.</p> <p>20 And it is page 31 of 31.</p> <p>21 MR. MORRIS: I think there may have</p> <p>22 been some something erroneously stapled to</p> <p>23 the hard copy that I gave you folks, but</p> <p>24 I'm looking for page 31 of 31 in the</p> <p>25 document that begins with the first page of</p>

<p>Page 198</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Exhibit 10.</p> <p>3 Q. Do you have that, Mr. Waterhouse?</p> <p>4 A. I don't have it yet. I'm looking.</p> <p>5 Q. All right. If you look at the top</p> <p>6 right-hand corner, you will see it says page</p> <p>7 hopefully something of 31?</p> <p>8 A. Yes, I've got it now.</p> <p>9 Q. Okay. You have got 31 of 31. You</p> <p>10 can take a moment to read that, if you would</p> <p>11 like.</p> <p>12 A. (Reviewing document.) Okay.</p> <p>13 Q. Have you ever seen this before?</p> <p>14 A. I don't know if I have seen this</p> <p>15 specific document, but, you know, I've --</p> <p>16 I'm -- I'm aware of it.</p> <p>17 Q. And is this the document that you</p> <p>18 had in mind when you sent that email to</p> <p>19 Ms. Thedford that we just looked at where you</p> <p>20 said that Highland had agreed not to make a</p> <p>21 demand upon HCMFA until May 2021?</p> <p>22 A. Honestly, I don't -- it wasn't this</p> <p>23 document. I mean, it's something like this,</p> <p>24 yes. I mean, yes.</p> <p>25 Q. Well --</p>	<p>Page 199</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. It is something like this, but I</p> <p>3 don't think it was this specific document.</p> <p>4 Q. Well, but this document does say in</p> <p>5 the last sentence that Highland agreed not to</p> <p>6 seek -- not to demand payment from HCMFA prior</p> <p>7 to May 31, 2021; right?</p> <p>8 A. Yes.</p> <p>9 Q. And are you aware of any other</p> <p>10 document that was ever created pursuant to</p> <p>11 which Highland agreed not to demand payment on</p> <p>12 amounts owed by HCMFA before May 31, 2021?</p> <p>13 A. Hold on. Are you asking, am I aware</p> <p>14 of a document that by HCMFA that basically says</p> <p>15 otherwise?</p> <p>16 Q. No. Let me try again.</p> <p>17 Are you aware of any other document</p> <p>18 pursuant to which -- pursuant to which Highland</p> <p>19 agreed not to make a demand on HCMFA until May</p> <p>20 31st, 2021?</p> <p>21 A. I'm -- I think there was something</p> <p>22 in connection with -- with the -- with the</p> <p>23 audit that basically says the same thing.</p> <p>24 Q. Okay. And do you think that the</p> <p>25 audit is referring to this particular document?</p>
<p>Page 200</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't know.</p> <p>3 Q. All right. This document is dated</p> <p>4 April 15, 2019. Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. And do you remember that the audit</p> <p>7 was completed on June 3rd, 2019?</p> <p>8 A. Yes.</p> <p>9 Q. And do you recall that the audited</p> <p>10 financials -- and I'm happy to pull them up if</p> <p>11 you would like, but do you recall that the</p> <p>12 audited financials included a reference to the</p> <p>13 agreement pursuant to which Highland agreed not</p> <p>14 to make a demand until May 31st, 2021?</p> <p>15 A. Yes, I remember.</p> <p>16 Q. And as part of the process, would</p> <p>17 you have expected the corporate accounting team</p> <p>18 to have provided a copy of this document to</p> <p>19 PwC?</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 A. Yes, I would have expected something</p> <p>22 like this, or again, you know, some document</p> <p>23 that basically states -- states the deferral</p> <p>24 till May 31 of 2020.</p> <p>25 Q. Okay.</p>	<p>Page 201</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. May 31 of 2021, excuse me.</p> <p>3 Q. And this document states the</p> <p>4 deferral that you just described; correct?</p> <p>5 A. It does.</p> <p>6 Q. And this document states the</p> <p>7 deferral that was described in the audited</p> <p>8 financial statements that we looked at before;</p> <p>9 correct?</p> <p>10 A. It does.</p> <p>11 MR. MORRIS: Okay. Can we scroll</p> <p>12 down just a little bit to see who signed on</p> <p>13 behalf of the acknowledgment there.</p> <p>14 Q. Okay. So Mr. Dondero signed this</p> <p>15 document on behalf of both HCMFA and Highland;</p> <p>16 do you see that?</p> <p>17 A. I do.</p> <p>18 Q. Okay. Did you discuss this document</p> <p>19 or the -- withdrawn.</p> <p>20 Did you discuss the concept of the</p> <p>21 deferral with Mr. Dondero in the spring of</p> <p>22 2019?</p> <p>23 A. I think I testified I don't recall.</p> <p>24 Q. Okay. Do you know whose idea it was</p> <p>25 to issue the acknowledgment in this form?</p>

<p>Page 202</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't recall.</p> <p>3 MR. MORRIS: Can we scroll back up</p> <p>4 to the document, please.</p> <p>5 Q. Do you see in the beginning it says,</p> <p>6 reference is made to certain outstanding</p> <p>7 amounts loaned from Highland to HCMFA for</p> <p>8 funding ongoing operations.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. And were you aware as the CFO of</p> <p>12 Highland and as the treasurer of HCMFA that as</p> <p>13 of April 15, 2019, Highland had made certain</p> <p>14 loans to HCMFA to fund HCMFA's ongoing</p> <p>15 operations?</p> <p>16 A. Yes.</p> <p>17 Q. And were you aware that those loans</p> <p>18 were payable on demand and remained outstanding</p> <p>19 as of December 31st, 2018?</p> <p>20 A. Yes.</p> <p>21 Q. And were you aware that those</p> <p>22 amounts were payable on demand, and they</p> <p>23 remained outstanding as of April 15, 2019?</p> <p>24 MS. DEITSCH-PEREZ: Object to the</p> <p>25 form.</p>	<p>Page 203</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Well, this -- this document dated</p> <p>3 April 15, 2019 says they have been deferred to</p> <p>4 May 31, 2021.</p> <p>5 Q. Right. But I'm just sticking to the</p> <p>6 first paragraph where they refer to the</p> <p>7 outstanding amounts. And in the end it says</p> <p>8 the -- it remained outstanding on December</p> <p>9 31st, 2018, and I think you told me that you</p> <p>10 understood that, and then I'm just trying to</p> <p>11 capture the last piece of it.</p> <p>12 Did you understand that there were</p> <p>13 amounts outstanding from the loan that Highland</p> <p>14 made to HCMFA to fund ongoing operations as of</p> <p>15 April 15th, 2019?</p> <p>16 A. Yes.</p> <p>17 Q. Thank you. Let's look at the next</p> <p>18 sentence. HCMFA expects that it may be unable</p> <p>19 to repay such amounts should they become due</p> <p>20 for the period commencing today and continuing</p> <p>21 through May 31st, 2021.</p> <p>22 Do you see that?</p> <p>23 MS. DANDENEAU: Objection to form.</p> <p>24 A. I do.</p> <p>25 Q. As the CFO -- withdrawn.</p>
<p>Page 204</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 As the treasurer of HCMFA, did you</p> <p>3 believe that -- do you believe that statement</p> <p>4 was true and accurate at the time it was</p> <p>5 rendered?</p> <p>6 A. I mean, it -- it -- the answer to</p> <p>7 that is I really didn't have any -- I didn't</p> <p>8 have an opinion really.</p> <p>9 Q. Did you do anything to educate</p> <p>10 yourself in April of 2019 on the issue of</p> <p>11 whether HCMFA could repay the amounts that it</p> <p>12 owed to Highland should they become due?</p> <p>13 A. I don't believe so.</p> <p>14 Q. Did you at any time form any</p> <p>15 opinions as to HCMFA's ability to repay all</p> <p>16 amounts due to Highland should they become due?</p> <p>17 A. Not really. I guess I don't...</p> <p>18 Q. Well, you told the retail board that</p> <p>19 HCMFA's liabilities exceeded their assets in</p> <p>20 2020; correct?</p> <p>21 A. Yes.</p> <p>22 Q. Based on the work that you did to</p> <p>23 prepare for the retail board, did you form any</p> <p>24 view as to whether HCMFA would be unable to</p> <p>25 repay the amounts that it owed to Highland</p>	<p>Page 205</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 should they become due?</p> <p>3 MS. DANDENEAU: Objection to form.</p> <p>4 A. I mean, I -- when you look at that,</p> <p>5 to answer you, completely, you know, again,</p> <p>6 if -- the response I gave the retail board was,</p> <p>7 you know, the -- the advice -- HCMFA advisors</p> <p>8 have the -- have the full faith and backing of</p> <p>9 Jim Dondero. So I didn't form an opinion of</p> <p>10 whether the advisor could pay it or not.</p> <p>11 Q. Did you form any view as to whether</p> <p>12 the advisors could repay the amounts that it</p> <p>13 owed to Highland should they become due without</p> <p>14 the full faith and backing of Mr. Dondero?</p> <p>15 MS. DANDENEAU: Objection to form.</p> <p>16 MS. DEITSCH-PEREZ: Form.</p> <p>17 A. I mean, if you -- if you -- if you</p> <p>18 take that last statement out, I mean, it would</p> <p>19 be difficult for HCMFA to pay back demand notes</p> <p>20 at that time.</p> <p>21 Q. And it was precisely for that reason</p> <p>22 that you told the retail board that -- that the</p> <p>23 retail -- that the advisors had the full faith</p> <p>24 and backing of Mr. Dondero; correct?</p> <p>25 MS. DANDENEAU: Objection to form.</p>

<p style="text-align: right;">Page 206</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I mean, yes, as the mouthpiece, I</p> <p>3 was relaying information.</p> <p>4 Q. Okay. And you relayed that</p> <p>5 information with the knowledge and approval of</p> <p>6 Mr. Dondero; correct?</p> <p>7 MS. DEITSCH-PEREZ: Object to the</p> <p>8 form.</p> <p>9 A. As I stated in the email, I don't</p> <p>10 believe, and I think I testified I don't</p> <p>11 believe I had conversations with Mr. Dondero at</p> <p>12 the time of that board meeting.</p> <p>13 Q. Did you tell the retail board that</p> <p>14 the advisors had the full faith and backing of</p> <p>15 Mr. Dondero without Mr. Dondero's prior</p> <p>16 approval?</p> <p>17 A. Yeah, I -- I -- yes, I'm -- like I</p> <p>18 said, I think I testified earlier, I'm sure I</p> <p>19 qualified it as well.</p> <p>20 Q. What do you mean by that?</p> <p>21 MS. DANDENEAU: Objection to form.</p> <p>22 A. Again -- again, like I said in the</p> <p>23 email, it has the full faith and backing of Jim</p> <p>24 Dondero unless that has changed.</p> <p>25 Q. Actually that is not what you said,</p>	<p style="text-align: right;">Page 207</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 so let's put the email back up.</p> <p>3 A. It is -- it is -- it is in the</p> <p>4 email.</p> <p>5 Q. Let's put the email back up. You</p> <p>6 didn't say unless it has changed. You said you</p> <p>7 believe it hasn't changed; right?</p> <p>8 A. Okay. And to my knowledge that</p> <p>9 hasn't changed, that is what it says.</p> <p>10 Q. That's right.</p> <p>11 A. But, again, I mean, that is -- I</p> <p>12 don't know everything. And I'm not in every</p> <p>13 conversation. I'm not -- to presume that I am,</p> <p>14 is -- and you have to put myself -- as you</p> <p>15 started this out, Mr. Morris, I was at home in</p> <p>16 October of 2020 with COVID -- or, you know,</p> <p>17 under these COVID times that we described is</p> <p>18 very difficult.</p> <p>19 We have all been working at home for</p> <p>20 really the first time ever, undergoing</p> <p>21 processes, procedures, control environments</p> <p>22 that have been untested, and there is poor</p> <p>23 communication.</p> <p>24 So I am relaying, as I'm telling you</p> <p>25 now, what is in the email. And unless</p>
<p style="text-align: right;">Page 208</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 something has changed -- to my knowledge, it</p> <p>3 hasn't changed, but it could have changed.</p> <p>4 Q. When you say that the advisors have</p> <p>5 the full faith and backing from Mr. Dondero,</p> <p>6 did you intend to convey that, to the extent</p> <p>7 the advisors were unable to satisfy their</p> <p>8 obligations as they become due, Mr. Dondero</p> <p>9 would do it for them?</p> <p>10 MS. DANDENEAU: Object to the form.</p> <p>11 MS. DEITSCH-PEREZ: Object to the</p> <p>12 form.</p> <p>13 And, John, we have given you a lot</p> <p>14 of leeway here but this does not seem</p> <p>15 relevant to this case. You seem sort of</p> <p>16 taking a complete sort of diversion into</p> <p>17 the allegations and the complaint just</p> <p>18 filed on Friday, and so I would ask you to</p> <p>19 move on because --</p> <p>20 MR. MORRIS: And I will tell you --</p> <p>21 I will tell you that I have never read that</p> <p>22 complaint cover-to-cover. I have nothing</p> <p>23 to do with the prosecution of those claims.</p> <p>24 And this issue that we're talking about</p> <p>25 right now is related solely to the</p>	<p style="text-align: right;">Page 209</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 promissory notes that your clients refuse</p> <p>3 to pay.</p> <p>4 So I'm going to continue to ask my</p> <p>5 questions, and I would ask the court</p> <p>6 reporter to read back my last question.</p> <p>7 (Record read.)</p> <p>8 MS. DEITSCH-PEREZ: And then I</p> <p>9 believe there were objections to form.</p> <p>10 Q. You can answer the question.</p> <p>11 A. Yes.</p> <p>12 Q. Thank you very much, sir.</p> <p>13 MR. MORRIS: Can we go back to the</p> <p>14 other document, please?</p> <p>15 Q. Mr. Waterhouse, do you know if this</p> <p>16 document was ever shared with the retail board?</p> <p>17 A. I don't recall.</p> <p>18 Q. Did you ever share it with the</p> <p>19 retail board?</p> <p>20 A. I don't recall.</p> <p>21 Q. Did you ever tell the retail board</p> <p>22 about the substance of this document?</p> <p>23 A. I don't recall.</p> <p>24 Q. Did you ever tell the retail board</p> <p>25 that Highland had agreed not to make a demand</p>

<p>Page 210</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 against HCMFA until May 2021?</p> <p>3 A. I don't recall.</p> <p>4 Q. Do you know whether anybody on</p> <p>5 behalf of the advisors ever informed the retail</p> <p>6 board that Highland had agreed on April 15,</p> <p>7 2019, not to make a demand against HCMFA under</p> <p>8 the promissory notes?</p> <p>9 A. I don't recall.</p> <p>10 Q. Did you instruct Ms. Thedford or</p> <p>11 anybody else responding to the retail board's</p> <p>12 15(c) inquiry to disclose this document?</p> <p>13 A. Did I instruct Ms. Thedford or</p> <p>14 anyone else to -- to -- to produce this, to</p> <p>15 disclose this document? Is that what you -- I</p> <p>16 just want to make sure.</p> <p>17 Q. Uh-huh.</p> <p>18 A. Yeah, I don't -- I don't recall.</p> <p>19 Q. Did you instruct anybody to inform</p> <p>20 the retail board, in response to their question</p> <p>21 as part of the 15(c) process, to -- to tell the</p> <p>22 retail board about Highland's agreement not to</p> <p>23 make a demand until 2021?</p> <p>24 MS. DANDENEAU: Objection to form.</p> <p>25 A. I don't recall.</p>	<p>Page 211</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Did you ever inform PwC that HCMFA's</p> <p>3 liabilities exceeded its assets?</p> <p>4 MS. DANDENEAU: Object to the form.</p> <p>5 A. I don't -- I don't think I told</p> <p>6 them. I mean, they -- they audited the</p> <p>7 financial statements.</p> <p>8 Q. Did -- do you know if anybody on</p> <p>9 behalf of Highland ever informed</p> <p>10 PricewaterhouseCoopers that HCMFA may be unable</p> <p>11 to repay amounts owing to Highland, should they</p> <p>12 become due?</p> <p>13 MS. DANDENEAU: Objection to form.</p> <p>14 A. Yes. Again, I think I testified</p> <p>15 earlier that -- that this was communicated to</p> <p>16 the auditors.</p> <p>17 Q. Ideally --</p> <p>18 A. I don't know who exactly did that.</p> <p>19 I don't recall doing it, but, yeah, it was --</p> <p>20 it was communicated. And that is why -- I</p> <p>21 mean, there is a disclosure in the financial</p> <p>22 statements; right?</p> <p>23 Q. There is, and that disclosure</p> <p>24 relates to the last sentence of this document;</p> <p>25 correct?</p>
<p>Page 212</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. Do you recall looking in the</p> <p>4 document and seeing anything that was disclosed</p> <p>5 with respect to the sentence above that?</p> <p>6 A. No.</p> <p>7 Q. Do you know whether anybody on</p> <p>8 behalf of Highland ever informed</p> <p>9 PricewaterhouseCoopers that HCMFA expects that</p> <p>10 it may be unable to repay amounts due and owing</p> <p>11 to Highland should they become due?</p> <p>12 MS. DEITSCH-PEREZ: Object to the</p> <p>13 form. I think that is the third time.</p> <p>14 A. I don't recall. Again, as I said,</p> <p>15 we -- all of this was given to the auditors.</p> <p>16 Q. Do you know if Highland received</p> <p>17 anything of value in exchange for its agreement</p> <p>18 not to demand payment on amounts owed by HCMFA</p> <p>19 prior to May 31st, 2021?</p> <p>20 MS. DEITSCH-PEREZ: Object to the</p> <p>21 form. That is the second time.</p> <p>22 MS. DANDENEAU: Object to the form.</p> <p>23 A. I have answered this question.</p> <p>24 MR. RUKAVINA: Hold on. Object to</p> <p>25 legal conclusion. Go ahead.</p>	<p>Page 213</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I have answered this question</p> <p>3 before.</p> <p>4 Q. And the answer was no?</p> <p>5 A. I'm not aware.</p> <p>6 Q. Now, this acknowledgment can't</p> <p>7 possibly apply to the two notes that you signed</p> <p>8 on behalf of HCMFA because those notes were</p> <p>9 signed on May 2nd and May 3rd, 2019; is that</p> <p>10 right?</p> <p>11 MS. DANDENEAU: Objection to form.</p> <p>12 A. Unless there is a drafting error.</p> <p>13 Q. Okay. Are you aware of a drafting</p> <p>14 error?</p> <p>15 A. I'm not aware. I didn't -- I wasn't</p> <p>16 part of -- I didn't sign this note or this</p> <p>17 acknowledgment. I didn't draft it.</p> <p>18 Q. But you do see it is dated April 15,</p> <p>19 2019; right?</p> <p>20 A. Yes.</p> <p>21 Q. And this was a document that was</p> <p>22 actually included by the advisors in a pleading</p> <p>23 they filed with the Court; right?</p> <p>24 MR. RUKAVINA: Well, I don't know</p> <p>25 that so I object to form.</p>

<p>Page 214</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Let's go to the first page of</p> <p>3 the document and just confirm that.</p> <p>4 MR. AIGEN: Mr. Morris, I just note</p> <p>5 that you already said there was some error</p> <p>6 with the document that is listed as</p> <p>7 exhibit --</p> <p>8 MR. MORRIS: No. No, no, no.</p> <p>9 MS. DEITSCH-PEREZ: Oh, okay.</p> <p>10 MR. MORRIS: What I said is that</p> <p>11 there is a few pages that were mistakenly</p> <p>12 stapled to the end of the document.</p> <p>13 MS. DEITSCH-PEREZ: Okay.</p> <p>14 MR. MORRIS: There is no problem</p> <p>15 with this document.</p> <p>16 MS. DEITSCH-PEREZ: And just so</p> <p>17 we're clear that the document -- the pages</p> <p>18 that start with defendant's amended answer</p> <p>19 are not intended to be part of this</p> <p>20 document?</p> <p>21 MR. MORRIS: That's correct.</p> <p>22 MS. DEITSCH-PEREZ: And that the --</p> <p>23 but it is your representation that the rest</p> <p>24 of the document is -- is -- is correct</p> <p>25 because we don't -- we don't have any way</p>	<p>Page 215</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 of verifying that, we're just --</p> <p>3 MR. MORRIS: You do, actually. You</p> <p>4 could just go to Docket No. 21-3004.</p> <p>5 MS. DEITSCH-PEREZ: If you want to</p> <p>6 stop this deposition so we can go and pull</p> <p>7 that document up, we're happy to do it. So</p> <p>8 I am just asking you for your</p> <p>9 representation.</p> <p>10 MR. MORRIS: Sure. I gave that.</p> <p>11 MS. DEITSCH-PEREZ: Okay.</p> <p>12 Q. So do you see that this is a</p> <p>13 document that was actually filed with the Court</p> <p>14 by Highland Capital Management Fund Advisors?</p> <p>15 A. No. I get with the first page in</p> <p>16 the section. Maybe I'm looking at the wrong</p> <p>17 thing. It says, Highland Capital Management.</p> <p>18 Q. Don't worry about it. Don't worry</p> <p>19 about it.</p> <p>20 A. Maybe I went back -- okay.</p> <p>21 MR. MORRIS: All right. Can we put</p> <p>22 up on the screen Exhibit 2.</p> <p>23 (Exhibit 2 marked.)</p> <p>24 MR. MORRIS: I think it is</p> <p>25 Exhibit 1.</p>
<p>Page 216</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MS. DANDENEAU: I'm sorry, John, did</p> <p>3 you say Exhibit 2 or Exhibit 1?</p> <p>4 MR. MORRIS: It is Exhibit 2 in the</p> <p>5 binders so it is premarked Exhibit 2. And</p> <p>6 now I'm asking -- right there -- going to</p> <p>7 Exhibit 1 to the document that was marked</p> <p>8 as Exhibit 2.</p> <p>9 MS. DANDENEAU: Got it. In the</p> <p>10 binder there is no --</p> <p>11 MS. DEITSCH-PEREZ: There is no</p> <p>12 Exhibit 1.</p> <p>13 MR. MORRIS: All right. So look at</p> <p>14 the one on the screen.</p> <p>15 Q. Do you see, Mr. Waterhouse, that</p> <p>16 this is a promissory note dated May 31st, 2017,</p> <p>17 in the approximate amount of \$30.7 million?</p> <p>18 A. Yes.</p> <p>19 Q. And do you see that the maker of the</p> <p>20 note is NexPoint?</p> <p>21 A. Yes.</p> <p>22 Q. And that Highland is the payee; is</p> <p>23 that right?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And do you see in Paragraph 2</p>	<p>Page 217</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 this is an annual installment note?</p> <p>3 A. Can you scroll down.</p> <p>4 Q. Sure.</p> <p>5 MR. MORRIS: Can we scroll down --</p> <p>6 yeah, there you go.</p> <p>7 A. Right there, yeah. Yes.</p> <p>8 MR. MORRIS: And can we scroll down</p> <p>9 to the signature line.</p> <p>10 Q. And do you recognize that as</p> <p>11 Mr. Dondero's signature?</p> <p>12 A. Yes.</p> <p>13 Q. And is this the promissory note that</p> <p>14 we talked about earlier where NexPoint had made</p> <p>15 certain payments in the aggregate amount of</p> <p>16 about 6 to \$7 million against principal and</p> <p>17 interest?</p> <p>18 A. I don't recall discussing the</p> <p>19 aggregate principal amounts of 6 to \$7 million,</p> <p>20 but -- so I don't -- I don't recall that prior</p> <p>21 discussion with those amounts.</p> <p>22 Q. All right. Let's take a look.</p> <p>23 NexPoint always included this promissory note</p> <p>24 as a liability on its audited financial</p> <p>25 statements; right?</p>

<p>Page 218</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. And NexPoint had its financial</p> <p>4 statements audited; isn't that correct?</p> <p>5 A. Yes.</p> <p>6 Q. And was the process of NexPoint's</p> <p>7 audit similar to the process you described</p> <p>8 earlier for Highland and HCMFA?</p> <p>9 A. Yes, it is similar.</p> <p>10 Q. Okay.</p> <p>11 MR. MORRIS: Can we put up</p> <p>12 NexPoint's audited financials and let</p> <p>13 everybody know what exhibit number it is,</p> <p>14 La Asia?</p> <p>15 MS. CANTY: It is going to be</p> <p>16 Exhibit 46.</p> <p>17 (Exhibit 46 marked.)</p> <p>18 Q. And do you see, sir, that we've put</p> <p>19 up NexPoint Advisors' consolidated financial</p> <p>20 statements and supplemental information for the</p> <p>21 period ending December 31st, 2019?</p> <p>22 A. Yes.</p> <p>23 Q. Did you participate in the process</p> <p>24 whereby these audited financial statements were</p> <p>25 issued?</p>	<p>Page 219</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I didn't participate directly, as</p> <p>3 I've described before, about the -- the team</p> <p>4 performing the audit.</p> <p>5 Q. Do you recall when the audit of</p> <p>6 NexPoint's financial statements for the period</p> <p>7 ending December 31st, 2019 was completed?</p> <p>8 A. Yes.</p> <p>9 Q. And when do you recall it being</p> <p>10 completed?</p> <p>11 A. In January of 2021.</p> <p>12 Q. Do you know why the 2019 audit</p> <p>13 report wasn't completed until January of 2021?</p> <p>14 A. Yes.</p> <p>15 Q. Why was the NexPoint audit report</p> <p>16 for the period ending 12/31/19 not completed</p> <p>17 until January 2021?</p> <p>18 A. Because we had to deal with working</p> <p>19 from home from -- with COVID, and on top of all</p> <p>20 of our daily responsibilities and job duties</p> <p>21 at -- at providing -- at Highland providing</p> <p>22 services to NexPoint, we had to do all of this</p> <p>23 extra work for a bankruptcy that was filed in</p> <p>24 October of 2019.</p> <p>25 MR. MORRIS: Can we go to the</p>
<p>Page 220</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 balance sheet on page 3? Okay. Stop right</p> <p>3 there.</p> <p>4 Q. Do you see under the liabilities</p> <p>5 section, the last item is note payable to</p> <p>6 affiliate?</p> <p>7 A. Yes.</p> <p>8 Q. And is that the note that we just</p> <p>9 looked at?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 Q. Withdrawn.</p> <p>12 Is that the approximately</p> <p>13 \$30 million note that we just looked at that</p> <p>14 was dated from 2017?</p> <p>15 MS. DANDENEAU: Objection to form.</p> <p>16 A. I believe no.</p> <p>17 Q. Okay. You're not aware of any other</p> <p>18 note that was outstanding from NexPoint to</p> <p>19 Highland as of the end of the year 2019, other</p> <p>20 than that one \$30 million note; right?</p> <p>21 A. I don't recall.</p> <p>22 Q. And as of the end of 2019, the</p> <p>23 principal amount that was due on the note was</p> <p>24 approximately \$23 million; right?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>	<p>Page 221</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 form.</p> <p>3 A. Approximately.</p> <p>4 Q. And does that refresh your</p> <p>5 recollection that between the time the note was</p> <p>6 executed and the end of 2019, that NexPoint had</p> <p>7 paid down approximately \$7 million?</p> <p>8 A. Yes. If we are just doing the math,</p> <p>9 yes.</p> <p>10 Q. Okay. Did NexPoint complete its</p> <p>11 audit from 2020?</p> <p>12 A. Sorry, you kind of broke up. Do</p> <p>13 NexPoint complete?</p> <p>14 Q. The audit of its financial</p> <p>15 statements for the period ending December 31st,</p> <p>16 2020?</p> <p>17 A. No.</p> <p>18 Q. No, it's not complete?</p> <p>19 A. No, it is not complete.</p> <p>20 Q. Did HCMFA complete its audit for the</p> <p>21 year ending December 31st, 2020?</p> <p>22 A. No.</p> <p>23 MR. MORRIS: Can we go to page 15,</p> <p>24 please, the paragraph at the bottom.</p> <p>25 Q. Do you see that NexPoint has</p>

<p>Page 222</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 included under notes payable to Highland a</p> <p>3 reference to the amounts that were outstanding</p> <p>4 as of the year-end 2019 under the note that we</p> <p>5 looked at just a moment ago?</p> <p>6 A. Yes. Are you talking about the</p> <p>7 second paragraph?</p> <p>8 Q. I'm actually talking about first</p> <p>9 paragraph. Do you understand that the first</p> <p>10 paragraph is a reference to the 2017 note, and</p> <p>11 the amounts that were -- the principal amount</p> <p>12 that was outstanding as of the end of 2019?</p> <p>13 MS. DANDENEAU: Objection to form.</p> <p>14 John, do you mean the first paragraph of</p> <p>15 that page?</p> <p>16 MR. MORRIS: No, the first paragraph</p> <p>17 under notes payable to Highland.</p> <p>18 A. Yeah, I see the paragraph, and</p> <p>19 again, this is what I answered earlier. I</p> <p>20 believe so, just because I don't -- again, this</p> <p>21 is a number in a balance sheet, and without</p> <p>22 matching it up and seeing the detail with the</p> <p>23 schedule like I kind of talked about for</p> <p>24 Highland's financial statements, it is a little</p> <p>25 bit more difficult to tie everything in</p>	<p>Page 223</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 perfectly together.</p> <p>3 Q. Okay. But you're not aware of any</p> <p>4 note that was outstanding at the end of 2019</p> <p>5 from NexPoint to Highland other than whatever</p> <p>6 principal was still due and owing under the</p> <p>7 \$30 million note issued in 2017; correct?</p> <p>8 A. Well, it -- I don't -- there is</p> <p>9 reference in the second paragraph. I don't --</p> <p>10 I don't -- I don't recall what that is</p> <p>11 referring to, so I don't -- I don't know.</p> <p>12 Q. Well, if you listen carefully to my</p> <p>13 question, right, I'm asking about notes that</p> <p>14 were outstanding at the end of 2019, and if we</p> <p>15 look at the paragraph you just referred to, it</p> <p>16 says that during the year there were new notes</p> <p>17 issued totaling \$1.5 million, but by the end of</p> <p>18 the year, no principal or interest was</p> <p>19 outstanding on the notes.</p> <p>20 Do you see that?</p> <p>21 A. Oh, I do, yes.</p> <p>22 Q. So does that refresh your</p> <p>23 recollection that there were no notes</p> <p>24 outstanding from NexPoint to Highland other</p> <p>25 than the principal remaining under the original</p>
<p>Page 224</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 \$30 million 2017 note that we looked at a</p> <p>3 moment ago?</p> <p>4 A. Well, we're at the bottom of the</p> <p>5 page. Is there anything on page 16?</p> <p>6 Q. That is a fair question, sure. That</p> <p>7 is it.</p> <p>8 A. Okay. So it appears that that is</p> <p>9 the only note that is detailed in the notes in</p> <p>10 the financial statement.</p> <p>11 Q. And you don't have any memory of any</p> <p>12 other note other than the 2017 note, right,</p> <p>13 being outstanding as of the end of the year?</p> <p>14 A. I deal with thousands of</p> <p>15 transactions every year. I don't really have a</p> <p>16 very specific memory for what exactly was</p> <p>17 outstanding.</p> <p>18 MR. MORRIS: Why don't we take a</p> <p>19 break now. We've been going for a little</p> <p>20 while. It's 3:26. Let's come back at</p> <p>21 3:40.</p> <p>22 VIDEOGRAPHER: We're going off the</p> <p>23 record at 3:26 p.m.</p> <p>24 (Recess taken 3:26 p.m. to 3:39 p.m.)</p> <p>25 VIDEOGRAPHER: We are going back on</p>	<p>Page 225</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 the record at 3:39 p.m.</p> <p>3 Q. All right. Mr. Waterhouse, we -- I</p> <p>4 don't think we have a lot more here.</p> <p>5 To the best of your knowledge and</p> <p>6 recollection, were all affiliate loans and all</p> <p>7 loans made to Mr. Dondero recorded on</p> <p>8 Highland's books and records as assets of</p> <p>9 Highland?</p> <p>10 MS. DANDENEAU: Object to the form,</p> <p>11 asked and answered.</p> <p>12 A. To my knowledge, yes.</p> <p>13 Q. Okay. Can you recall any loan to</p> <p>14 any affiliate or Mr. Dondero that was not</p> <p>15 recorded on Highland's books and records as an</p> <p>16 asset?</p> <p>17 A. Like during my time as CFO? I don't</p> <p>18 recall.</p> <p>19 Q. How about after the time that you</p> <p>20 were CFO? Did you recall that there was a loan</p> <p>21 by Highland to an affiliate or to Mr. Dondero</p> <p>22 that hadn't been previously recorded on</p> <p>23 Highland's books as an asset?</p> <p>24 MS. DANDENEAU: Objection to form.</p> <p>25 A. I guess I don't understand the</p>

<p>Page 226</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 question. I left Highland as of -- I'm not</p> <p>3 aware of -- I left Highland in February --</p> <p>4 probably the last day of February of 2021.</p> <p>5 Q. Okay.</p> <p>6 A. I'm not -- I'm not aware of any --</p> <p>7 I'm not aware of anything past that date.</p> <p>8 Q. Okay. While you were the CFO at</p> <p>9 Highland, did Highland prepare in the ordinary</p> <p>10 course of business a document that reported</p> <p>11 operating results on a monthly basis?</p> <p>12 A. Yes.</p> <p>13 Q. And are you generally familiar with</p> <p>14 the monthly operating reports?</p> <p>15 A. Yeah. You are referring to the</p> <p>16 reports that we filed to the Court every month?</p> <p>17 Q. I apologize, I'm not. I'm taking</p> <p>18 you back to the pre-petition period. There was</p> <p>19 a report that I have seen that I'm going to</p> <p>20 show you, but I'm just asking for your</p> <p>21 knowledge.</p> <p>22 MR. MORRIS: Let's put it up on the</p> <p>23 screen, Exhibit 39.</p> <p>24 (Exhibit 39 marked.)</p> <p>25 Q. Do you see this is a document that</p>	<p>Page 227</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 is called operating results?</p> <p>3 A. Yeah, that's the title of it.</p> <p>4 Q. Okay. And was a report of operating</p> <p>5 results prepared by Highland on a monthly basis</p> <p>6 during the time that you served as CFO?</p> <p>7 A. No.</p> <p>8 Q. Are you familiar with a document of</p> <p>9 this type? And we can certainly look at the</p> <p>10 next page or two to refresh your recollection.</p> <p>11 A. I'm just looking at the title. I</p> <p>12 don't really -- again, as I discussed before, I</p> <p>13 don't have any records or documents or emails</p> <p>14 or appointments or anything that I was able to</p> <p>15 use prior to -- prior to this deposition, so</p> <p>16 I'm doing the best I can.</p> <p>17 Q. Okay. You don't need to apologize.</p> <p>18 I'm just asking you if you are familiar with</p> <p>19 the document called Operating Results that was</p> <p>20 prepared on a monthly basis at Highland?</p> <p>21 MS. DEITSCH-PEREZ: Object to the</p> <p>22 form.</p> <p>23 Q. If you're not, you're not.</p> <p>24 A. I don't believe this was prepared on</p> <p>25 a monthly basis.</p>
<p>Page 228</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Do you see that this one</p> <p>3 is -- is dated February 2018?</p> <p>4 A. Yes.</p> <p>5 Q. Do you have -- do you believe --</p> <p>6 have you ever seen a document that was</p> <p>7 purporting to report operating results for</p> <p>8 Highland?</p> <p>9 MS. DANDENEAU: Objection to form.</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And when you say that you</p> <p>12 don't believe it was produced on a monthly</p> <p>13 basis, was it produced on any periodic bases to</p> <p>14 the best of your recollection?</p> <p>15 A. I believe it was -- it was prepared</p> <p>16 on an annual basis.</p> <p>17 Q. Okay.</p> <p>18 MR. MORRIS: Can we look at the next</p> <p>19 page.</p> <p>20 Q. Do you see that there is a statement</p> <p>21 here called: Significant items impacting</p> <p>22 HCMLP's balance sheet?</p> <p>23 And it is dated February 2018.</p> <p>24 A. Yes.</p> <p>25 Q. Do you recall that there was a</p>	<p>Page 229</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 report that Highland prepared that identified</p> <p>3 significant items impacting the balance sheet?</p> <p>4 A. A report that was prepared.</p> <p>5 Q. Let me ask a better question: Did</p> <p>6 Highland prepare reports to the best of your</p> <p>7 recollection that identified significant items</p> <p>8 that impacted its balance sheet?</p> <p>9 A. Well, so Highland prepared a -- a</p> <p>10 monthly close package. And maybe I'm</p> <p>11 getting -- and -- and maybe change names at one</p> <p>12 time or maybe I'm just -- again, just</p> <p>13 misremembering -- but in that, yes, there is a</p> <p>14 page that would detail just changes in -- you</p> <p>15 know, just changes month over month on the</p> <p>16 balance sheet.</p> <p>17 Q. Okay. And maybe it is my fault.</p> <p>18 Maybe I didn't know the proper name for it.</p> <p>19 But let's use the phrase "monthly close</p> <p>20 package."</p> <p>21 Did Highland prepare a monthly close</p> <p>22 package in the ordinary course of business</p> <p>23 during the time that you served as CFO?</p> <p>24 MS. DANDENEAU: Objection to form.</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 230</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And did the monthly close package</p> <p>3 that Highland prepared include information</p> <p>4 concerning significant items that impacted</p> <p>5 Highland's balance sheet?</p> <p>6 A. Yes, it had a page like that is --</p> <p>7 that is on the screen that detailed items</p> <p>8 like -- of that nature.</p> <p>9 Q. And do you know who -- was there</p> <p>10 anybody at Highland who was responsible for</p> <p>11 overseeing the preparation of the monthly</p> <p>12 reporting package?</p> <p>13 A. That would have been -- again, it</p> <p>14 varies over time during my tenure as CFO.</p> <p>15 It -- it varied over -- over time, but -- but</p> <p>16 typically a -- a corporate accounting manager.</p> <p>17 Q. And who were the corporate</p> <p>18 accounting managers during your tenure as CFO?</p> <p>19 A. It would have been Dave Klos and</p> <p>20 Kristin Hendrix.</p> <p>21 Q. And did the corporate accounting</p> <p>22 manager deliver to you drafts of the monthly</p> <p>23 close package before it was finalized?</p> <p>24 A. Sometimes.</p> <p>25 Q. Was that the practice even if there</p>	<p style="text-align: right;">Page 231</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 were exceptions to the practice?</p> <p>3 A. The practice meaning that they</p> <p>4 sometimes lured them to me?</p> <p>5 Q. That that was the expectation even</p> <p>6 if circumstances prevented that from happening</p> <p>7 from time to time.</p> <p>8 MS. DEITSCH-PEREZ: Object to the</p> <p>9 form.</p> <p>10 A. I -- I would say it started out that</p> <p>11 way but over the years it -- it was not</p> <p>12 enforced.</p> <p>13 Q. Okay. So you were -- you reviewed</p> <p>14 and approved monthly -- monthly reporting</p> <p>15 packages for a certain period of time and then</p> <p>16 over time you stopped doing that.</p> <p>17 Do I have that right?</p> <p>18 MS. DANDENEAU: Objection to form.</p> <p>19 A. Yes, I mean, if you're talking about</p> <p>20 a formal meeting where we sit down and go</p> <p>21 through and approve it. I would say that was</p> <p>22 standard practice a decade -- you know, early</p> <p>23 on. And as time went on that -- that -- that</p> <p>24 practice wasn't followed.</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">Page 232</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. And, quite frankly, I don't even</p> <p>3 know if these were -- these were sent to me</p> <p>4 even in any capacity.</p> <p>5 Q. What was the purpose of preparing</p> <p>6 the monthly reporting package -- withdrawn.</p> <p>7 What was the purpose of preparing</p> <p>8 the monthly close package?</p> <p>9 MS. DEITSCH-PEREZ: Object to the</p> <p>10 form.</p> <p>11 A. The -- the original purpose was so</p> <p>12 that it would just -- it would be a report that</p> <p>13 was reviewed monthly with senior management.</p> <p>14 Q. Who was included in the idea of</p> <p>15 senior management?</p> <p>16 A. You know, I think originally when</p> <p>17 this was conceived that would have been like</p> <p>18 Jim Dondero and Mark Okada.</p> <p>19 Q. Were monthly reporting -- withdrawn.</p> <p>20 Were monthly close packages prepared</p> <p>21 to the best of your knowledge until the time</p> <p>22 you left Highland?</p> <p>23 A. To my knowledge -- I don't know,</p> <p>24 actually. I mean, to my knowledge, I believe</p> <p>25 it was being -- that was still being done. I</p>	<p style="text-align: right;">Page 233</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 don't know because, again, I wasn't reviewing</p> <p>3 them. I hadn't reviewed a close package for --</p> <p>4 for a long time. But I believe the standard</p> <p>5 practice that was still being carried out.</p> <p>6 Q. Did you ever have any discussions</p> <p>7 with the debtor's independent board concerning</p> <p>8 any promissory notes that were issued by any of</p> <p>9 the affiliates or Mr. Dondero?</p> <p>10 A. I can't -- I can't -- I can't recall</p> <p>11 specifically.</p> <p>12 Q. Did you speak with the independent</p> <p>13 board from time to time?</p> <p>14 A. Yes, from -- from -- from time to</p> <p>15 time I had discussions with the independent</p> <p>16 board members, you know, either -- either, you</p> <p>17 know, by themselves or wholly, you know, as --</p> <p>18 as a -- as a combined work.</p> <p>19 Q. Okay. Before we talk about</p> <p>20 Mr. Seery, do you recall ever having a</p> <p>21 conversation with Mr. Nelms or Mr. Dubel</p> <p>22 concerning any promissory note that was</p> <p>23 rendered by one of the affiliates or</p> <p>24 Mr. Dondero to Highland?</p> <p>25 A. I don't recall any conversations</p>

<p>Page 234</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 specifically.</p> <p>3 Q. Do you know if the topic was ever</p> <p>4 discussed, even if you don't remember it</p> <p>5 specifically?</p> <p>6 MS. DANDENEAU: Objection to form.</p> <p>7 A. It -- it -- it may have. I don't</p> <p>8 know. I don't recall.</p> <p>9 Q. Do you recall ever discussing any</p> <p>10 promissory note issued by any of the affiliates</p> <p>11 or Mr. Dondero with James Seery?</p> <p>12 A. I don't -- I don't recall</p> <p>13 specifically.</p> <p>14 Q. Do you recall generally ever</p> <p>15 discussing the topic of promissory notes issued</p> <p>16 by any of the affiliates or Mr. Dondero to</p> <p>17 Highland with Mr. Seery?</p> <p>18 A. Nothing -- nothing is really jumping</p> <p>19 out at me.</p> <p>20 Q. Do you recall if you ever told</p> <p>21 Mr. Seery that any of the affiliates or</p> <p>22 Mr. Dondero didn't have an obligation to pay</p> <p>23 all amounts due and owing under their notes?</p> <p>24 A. I don't recall having that</p> <p>25 conversation.</p>	<p>Page 235</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Did you ever tell Mr. Seery that you</p> <p>3 had any reason to believe that the amounts</p> <p>4 reflected in the notes issued by the affiliates</p> <p>5 and Mr. Dondero were invalid for any reason?</p> <p>6 A. I don't -- I don't recall.</p> <p>7 Q. Did you tell Mr. Dondero -- did you</p> <p>8 tell Mr. Seery that you thought the promissory</p> <p>9 notes issued by the advisors and Mr. Dondero</p> <p>10 that were outstanding as of the petition date</p> <p>11 were assets of the estate?</p> <p>12 A. I don't recall having a specific</p> <p>13 conversation about those -- you know, those</p> <p>14 notes outstanding as -- as of the petition date</p> <p>15 being assets on the estate. I mean, we put</p> <p>16 together -- you know, they're in the books and</p> <p>17 records of the financial statements. I don't</p> <p>18 recall having a specific conversation.</p> <p>19 Q. Did you ever prepare any documents</p> <p>20 that were delivered to Mr. Seery that concerned</p> <p>21 the promissory notes issued by any of the</p> <p>22 affiliates or Mr. Dondero?</p> <p>23 MS. DANDENEAU: Objection to form.</p> <p>24 A. Did I produce any that concerned --</p> <p>25 you mean did I just -- did I give Mr. Seery</p>
<p>Page 236</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 anything that -- that said I have concerns over</p> <p>3 these notes?</p> <p>4 Q. No. Let me try again. Maybe it was</p> <p>5 my question.</p> <p>6 Did you ever give Mr. Seery any</p> <p>7 information concerning any of the notes that</p> <p>8 were issued by any of the affiliates or</p> <p>9 Mr. Dondero?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 A. I don't recall if I did or not. I</p> <p>12 don't -- I don't remember. I mean, you have my</p> <p>13 emails. You may have asked. Again, I don't --</p> <p>14 I don't know.</p> <p>15 MR. MORRIS: Can we put up the</p> <p>16 document that has been premarked as Exhibit</p> <p>17 39?</p> <p>18 MS. DANDENEAU: John, that is this</p> <p>19 document, isn't it?</p> <p>20 MR. MORRIS: Oh, yeah, it might be,</p> <p>21 as a matter of fact. Let's go to Number</p> <p>22 40.</p> <p>23 (Exhibit 40 marked.)</p> <p>24 Q. During the bankruptcy,</p> <p>25 Mr. Waterhouse, did you prepare documents that</p>	<p>Page 237</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 were filed with the bankruptcy court?</p> <p>3 A. I didn't -- I didn't prepare them</p> <p>4 personally.</p> <p>5 Q. Did people prepare them under your</p> <p>6 direction?</p> <p>7 A. Yes. There were members of the team</p> <p>8 that prepared them, and they worked in -- you</p> <p>9 know, there were members of DSI that were</p> <p>10 involved in the process as well.</p> <p>11 Q. To the best of your knowledge, did</p> <p>12 DSI rely on the employees of Highland for the</p> <p>13 information that they used to prepare the</p> <p>14 bankruptcy filings?</p> <p>15 A. Yes. The books and records were</p> <p>16 with the Highland personnel.</p> <p>17 Q. Okay. And do you see on the screen</p> <p>18 here, there is a document that we have marked</p> <p>19 as Exhibit 40 that is -- that is titled Summary</p> <p>20 of Assets and Liabilities?</p> <p>21 A. Uh-huh.</p> <p>22 Q. Okay. And do you recall reviewing</p> <p>23 any summary of assets and liabilities before it</p> <p>24 was filed with the bankruptcy court?</p> <p>25 A. Yes, I recall reviewing this at a</p>

<p>Page 238</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 high level.</p> <p>3 Q. And did you believe that it was</p> <p>4 accurate at the time it was filed?</p> <p>5 A. I didn't have any other reason to</p> <p>6 believe otherwise.</p> <p>7 Q. Okay. Do you see that the total</p> <p>8 value of all properties listed in Part 1 is</p> <p>9 approximately \$410 million?</p> <p>10 MS. DEITSCH-PEREZ: Objection to</p> <p>11 form.</p> <p>12 A. Yes, it is in 1c.</p> <p>13 Q. Yes.</p> <p>14 A. Yes, I see that.</p> <p>15 Q. Okay. If we go to the second page,</p> <p>16 now I think I may just have excerpts here, just</p> <p>17 so everybody is clear, but if we scroll down to</p> <p>18 the second page, you will see that there is</p> <p>19 a -- a little further. There you go. You will</p> <p>20 see there is a reference to Item 71, notes</p> <p>21 receivable.</p> <p>22 Do you see that?</p> <p>23 A. I do.</p> <p>24 Q. And that was a reference to the</p> <p>25 notes receivable from the affiliates and</p>	<p>Page 239</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Mr. Dondero, among others; is that right?</p> <p>3 MS. DANDENEAU: Objection to form.</p> <p>4 A. Yes. The affiliate notes and the</p> <p>5 Dondero notes were in this amount, but they</p> <p>6 weren't -- again, like you said, and among</p> <p>7 others.</p> <p>8 Q. Okay. We will look at the</p> <p>9 specificity because I'm not playing gaming</p> <p>10 here, but do you know if the \$150 million of</p> <p>11 notes receivable was included within the</p> <p>12 \$410 million of total value of the debtor's</p> <p>13 assets?</p> <p>14 MS. DANDENEAU: Objection to form.</p> <p>15 A. I -- I -- I believe so.</p> <p>16 Q. Right. And so is it fair to say</p> <p>17 that as of the date this document was prepared,</p> <p>18 the notes receivable were more than one-third</p> <p>19 of the value of the debtor's assets?</p> <p>20 MS. DEITSCH-PEREZ: Object to the</p> <p>21 form.</p> <p>22 MS. DANDENEAU: Object to the form.</p> <p>23 A. Again, if you are just taking the</p> <p>24 math, 150 divided by whatever the \$400 million</p> <p>25 number is above, then yes, you get there.</p>
<p>Page 240</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay.</p> <p>3 A. You know, but as of the time of this</p> <p>4 filing, that is what was put in this filing,</p> <p>5 right, but, you know, I mean, numbers --</p> <p>6 numbers change, facts and circumstances change.</p> <p>7 Q. But as the CFO of Highland, the</p> <p>8 debtor in bankruptcy, did you believe that this</p> <p>9 number accurately reflected the total amount</p> <p>10 due under the notes receivable?</p> <p>11 A. That is what we had in our books and</p> <p>12 records.</p> <p>13 Q. Okay. And did you believe as the</p> <p>14 CFO that the books and records accurately</p> <p>15 reported the then value of the debtor's assets?</p> <p>16 MS. DANDENEAU: Objection to form.</p> <p>17 A. We didn't -- as part of this filing,</p> <p>18 there was no fair value measurement or</p> <p>19 anything. These were just accounting entries</p> <p>20 for the promissory notes. There is no analysis</p> <p>21 for impairment or fair market value adjustments</p> <p>22 or anything of that nature. This is purely</p> <p>23 taking numbers and putting them in our form.</p> <p>24 Q. Did you do any impairment analysis</p> <p>25 at any time while you were employed by</p>	<p>Page 241</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Highland?</p> <p>3 A. Yes, we did do impairment analysis</p> <p>4 on -- on assets.</p> <p>5 Q. Okay. Did you ever do an impairment</p> <p>6 analysis on any of the promissory notes that</p> <p>7 were given to Highland by any of the affiliates</p> <p>8 or Mr. Dondero?</p> <p>9 A. Not that I recall.</p> <p>10 Q. Under what circumstances do you</p> <p>11 prepare impairment analyses?</p> <p>12 A. As -- as -- if you're preparing</p> <p>13 financials in accordance with GAAP, generally</p> <p>14 accepted accounting principles, if you're</p> <p>15 preparing full GAAP financials, you should be</p> <p>16 preparing -- you should be undergoing on a</p> <p>17 periodic basis any fair market value</p> <p>18 adjustments to assets.</p> <p>19 As I was instructed at the time of</p> <p>20 the petition date, we weren't producing GAAP</p> <p>21 financials. So this wasn't something I was</p> <p>22 worried about nor concerned about.</p> <p>23 Q. Okay. Were NexPoint and HCMFA and</p> <p>24 Highland's audited financial statements</p> <p>25 prepared in accordance with GAAP?</p>

<p>Page 242</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. The audited financials -- yes,</p> <p>3 audited financial statements are prepared in</p> <p>4 accordance with GAAP.</p> <p>5 Q. Do you recall whether any of</p> <p>6 Highland or HCMFA or NexPoint ever made a fair</p> <p>7 market value adjustment to any of the notes</p> <p>8 issued by any of the affiliates or Mr. Dondero</p> <p>9 to Highland?</p> <p>10 A. I do not recall that happening, but</p> <p>11 the -- it is because under -- under GAAP,</p> <p>12 the -- the treatment of liabilities is</p> <p>13 different than assets.</p> <p>14 Q. Okay. So then let's just focus on</p> <p>15 Highland's audited financial statements.</p> <p>16 The last audited financial</p> <p>17 statements were for the period ending December</p> <p>18 31st, 2018; correct?</p> <p>19 A. That is my understanding.</p> <p>20 Q. And you had -- you had an obligation</p> <p>21 to disclose anything to PricewaterhouseCoopers</p> <p>22 concerning any subsequent events between the</p> <p>23 end of 2018 and June 3rd, 2019; correct?</p> <p>24 MS. DANDENEAU: Objection to form.</p> <p>25 MS. DEITSCH-PEREZ: Form.</p>	<p>Page 243</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Correct.</p> <p>3 Q. Okay. To the best of your</p> <p>4 knowledge, as Highland's CFO, did Highland ever</p> <p>5 make any fair market value adjustments to any</p> <p>6 of the promissory notes that were carried on</p> <p>7 its balance sheet and that were issued by any</p> <p>8 of the affiliates or Mr. Dondero?</p> <p>9 A. I think I answered that question</p> <p>10 earlier. I don't recall doing that for any of</p> <p>11 the -- those -- those notes. So it would have</p> <p>12 included the audit for the -- for the 2018</p> <p>13 period.</p> <p>14 Q. Okay.</p> <p>15 MR. MORRIS: Can we go to the next</p> <p>16 page.</p> <p>17 Q. Do you see this is a note a list of</p> <p>18 notes receivable? Do you see that?</p> <p>19 A. Yes, I do.</p> <p>20 Q. And do you see that this ties into</p> <p>21 the page that we were just looking?</p> <p>22 A. I'm sorry, can we go back to the</p> <p>23 prior page? I mean, it was at 150,331,222. It</p> <p>24 was on the prior page. Next page. Yes, it</p> <p>25 agrees.</p>
<p>Page 244</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. So now let's look at that</p> <p>3 schedule. So this was the face amount of all</p> <p>4 of the promissory notes that Highland held at</p> <p>5 the time this document was filed with the</p> <p>6 bankruptcy court; right?</p> <p>7 A. Yes.</p> <p>8 Q. There is a footnote there that says,</p> <p>9 doubtful or uncollectible accounts are</p> <p>10 evaluated at year-end.</p> <p>11 Do you see that?</p> <p>12 A. I do.</p> <p>13 Q. Okay. And is it fair to say that as</p> <p>14 of the year-end 2018, the year before this,</p> <p>15 that to the extent any of these notes were</p> <p>16 outstanding at that time, they weren't deemed</p> <p>17 to be doubtful or uncollectible?</p> <p>18 A. Yeah. For the 2018 audit, there</p> <p>19 weren't any -- there weren't any adjustments to</p> <p>20 fair value.</p> <p>21 Q. Okay. And during the bankruptcy, do</p> <p>22 you recall that Highland subsequently reserved</p> <p>23 for the Hunter Mountain Investment Trust note?</p> <p>24 A. Yes.</p> <p>25 Q. Why did Highland -- were you</p>	<p>Page 245</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 involved in the decision to reserve the Hunter</p> <p>3 Mountain Investment Trust note?</p> <p>4 A. I was not.</p> <p>5 Q. Do you know why Highland decided to</p> <p>6 reserve for the Hunter Mountain Investment</p> <p>7 Trust note?</p> <p>8 A. I don't know yet decision was made.</p> <p>9 I believe it was made by someone at DSI.</p> <p>10 Q. Okay. I'm just asking if you know</p> <p>11 why.</p> <p>12 Did you ever ask anyone why they</p> <p>13 reserved for that particular note?</p> <p>14 A. I don't recall.</p> <p>15 Q. Do you know whether the debtor</p> <p>16 reserved for any other note on this list during</p> <p>17 the bankruptcy?</p> <p>18 A. Again, I don't recall. I wasn't</p> <p>19 part of any process of -- again, like any fair</p> <p>20 value adjustments or anything to that degree.</p> <p>21 Like I said, a lot of that was done by DSI and</p> <p>22 it was kind of out of our court.</p> <p>23 Q. Okay. Do you know if any note</p> <p>24 receivable on this list was ever deemed by the</p> <p>25 debtor to be doubtful or uncollectible?</p>

<p style="text-align: right;">Page 246</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't -- I don't have a</p> <p>3 recollection of every filing, so I don't know.</p> <p>4 Q. Did you ever have a discussion with</p> <p>5 anybody at any time about whether any of the</p> <p>6 notes receivable on this list should be deemed</p> <p>7 to be doubtful or uncollectible?</p> <p>8 A. No. As I previously stated, we were</p> <p>9 told we didn't have to keep GAAP financials.</p> <p>10 We weren't having -- you know, there is no</p> <p>11 underlying audits being performed, so I mean,</p> <p>12 it wasn't something I worried about.</p> <p>13 MR. MORRIS: I move to strike.</p> <p>14 Q. Did you ever have a conversation</p> <p>15 with anybody about any of the notes receivable</p> <p>16 and whether they should be deemed to be</p> <p>17 doubtful or uncollectible? Did you have the</p> <p>18 conversation, yes or no?</p> <p>19 MS. DANDENEAU: Objection to form.</p> <p>20 A. I don't recall.</p> <p>21 Q. Do you recall ever telling anybody</p> <p>22 that you believed any of the notes receivable</p> <p>23 on this list should be doubtful -- should be</p> <p>24 deemed to be doubtful or uncollectible?</p> <p>25 MS. DANDENEAU: Objection to form.</p>	<p style="text-align: right;">Page 247</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't recall. I mean, it may have</p> <p>3 happened, you know, again, when we initially</p> <p>4 getting DSI up to speed and going through</p> <p>5 financials, it may have happened, but I don't</p> <p>6 recall specifically.</p> <p>7 Q. While you were the CFO of Highland</p> <p>8 during the time that the company was in</p> <p>9 bankruptcy, did you have any reason to believe</p> <p>10 that any of the notes receivable on this list</p> <p>11 other than Hunter Mountain Investment Trust</p> <p>12 should have been characterized as doubtful or</p> <p>13 uncollectible?</p> <p>14 MS. DANDENEAU: Objection to form.</p> <p>15 MS. DEITSCH-PEREZ: Form.</p> <p>16 A. I didn't know. I didn't form an</p> <p>17 opinion. Bankruptcy was new to me. It still</p> <p>18 is new to me, even after going through this.</p> <p>19 So I really didn't know what to expect nor</p> <p>20 really -- you know, I didn't know.</p> <p>21 MR. MORRIS: I move to strike.</p> <p>22 Q. During the period of Highland's</p> <p>23 bankruptcy when you were serving as CFO, did</p> <p>24 you have any reason to believe any of the notes</p> <p>25 on this list were doubtful or uncollectible?</p>
<p style="text-align: right;">Page 248</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MS. DEITSCH-PEREZ: This is like the</p> <p>3 fifth time you've asked it. Object to the</p> <p>4 form.</p> <p>5 MR. MORRIS: I'm moving to strike,</p> <p>6 if you haven't noticed, because he's not</p> <p>7 answering the question.</p> <p>8 MS. DEITSCH-PEREZ: He was answering</p> <p>9 the question, you just didn't like it, like</p> <p>10 the answer.</p> <p>11 MR. MORRIS: Good Lord.</p> <p>12 Q. Go ahead, Mr. Waterhouse.</p> <p>13 A. Again, I don't -- we brought up a</p> <p>14 myriad of issues at the start of the bankruptcy</p> <p>15 case. I don't recall if this was one of them,</p> <p>16 but, again, there are a lot of things we</p> <p>17 couldn't change. Even, you know, I was told</p> <p>18 status quo, blah, blah, blah, right, there is a</p> <p>19 stay, you can't -- you know, I don't recall</p> <p>20 specifically, but that doesn't mean it didn't</p> <p>21 happen.</p> <p>22 MR. MORRIS: I move to strike.</p> <p>23 Q. During the time that Highland was in</p> <p>24 bankruptcy and you served as CFO, did you have</p> <p>25 any reason to believe that any of the notes</p>	<p style="text-align: right;">Page 249</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 receivable on this list were doubtful or</p> <p>3 uncollectible?</p> <p>4 MS. DEITSCH-PEREZ: Object to the</p> <p>5 form.</p> <p>6 A. Potentially.</p> <p>7 Q. Did you ever tell anybody that?</p> <p>8 A. As I just stated like five times,</p> <p>9 yes, we -- at the beginning after filing and we</p> <p>10 were getting DSI and others up to speed, you</p> <p>11 know, we had a myriad of discussions of a lot</p> <p>12 of things and this was likely one of them. I</p> <p>13 don't -- but I don't recall specifically we</p> <p>14 talked --</p> <p>15 Q. I don't want to know -- I don't want</p> <p>16 to know what was --</p> <p>17 MS. DEITSCH-PEREZ: Wait, wait.</p> <p>18 Excuse me. Mr. Morris, you did not let him</p> <p>19 finish his answer.</p> <p>20 A. I spoke -- we had -- we were</p> <p>21 bringing Fred Karesa and Brad Sharp (phonetic)</p> <p>22 up to speed on all of these items, contracts,</p> <p>23 and investments and going through -- we had</p> <p>24 hours and hours and hours of discussion. And</p> <p>25 then not only do I have to repeat this not</p>

<p>Page 250</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 once, twice, three, four times with -- you</p> <p>3 know, I mean, we -- I don't -- I don't remember</p> <p>4 the sum culmination of all these discussions.</p> <p>5 They all kind of blend together.</p> <p>6 MR. MORRIS: Okay. I move to strike</p> <p>7 and I will try one more time.</p> <p>8 Q. Did you ever tell anybody at DSI</p> <p>9 that you believed any of the notes receivable</p> <p>10 on this list were doubtful or uncollectible?</p> <p>11 MS. DANDENEAU: Object to form.</p> <p>12 A. Potentially.</p> <p>13 Q. Potentially you told them or</p> <p>14 potentially they were doubtful or</p> <p>15 uncollectible?</p> <p>16 A. Potentially I told them that we</p> <p>17 needed to look at the value of these -- of</p> <p>18 these assets.</p> <p>19 Q. Okay. Did you -- okay. It is</p> <p>20 potential that you told them and it is</p> <p>21 potentially that you didn't, right?</p> <p>22 MS. DANDENEAU: Objection to form.</p> <p>23 A. I've gone through that. I don't</p> <p>24 recall specifically.</p> <p>25 Q. So you should just -- I don't want</p>	<p>Page 251</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 to tell what you to do. Do you have --</p> <p>3 MS. DANDENEAU: Good.</p> <p>4 Q. Other than -- other than telling</p> <p>5 them that they should look at the values, do</p> <p>6 you have any recollection whatsoever of ever</p> <p>7 having told anybody at DSI that any of the</p> <p>8 notes receivable on this page were doubtful or</p> <p>9 uncollectible?</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form.</p> <p>12 MS. DANDENEAU: Objection.</p> <p>13 A. I recall having general discussions</p> <p>14 about everything on our balance sheet which</p> <p>15 would have included these -- these notes</p> <p>16 receivable.</p> <p>17 Q. Okay.</p> <p>18 A. I don't recall specifically where</p> <p>19 those discussions delved into.</p> <p>20 Q. Do you recall any discussion at all</p> <p>21 on the topic of whether any of these notes on</p> <p>22 this list were doubtful or uncollectible?</p> <p>23 MR. AIGEN: Mr. Morris, how on earth</p> <p>24 is that question different from the</p> <p>25 question that you just asked for the last</p>
<p>Page 252</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 five times? I mean, really I thought you</p> <p>3 were -- (overspeak.)</p> <p>4 MR. MORRIS: Because he never</p> <p>5 answered it.</p> <p>6 MS. DEITSCH-PEREZ: Are you</p> <p>7 listening to him?</p> <p>8 MR. MORRIS: You know --</p> <p>9 MS. DEITSCH-PEREZ: He basically</p> <p>10 said that he had a conversation with DSI</p> <p>11 that went over all of this stuff and that</p> <p>12 conversation could have included the notes</p> <p>13 but he doesn't recall specifically.</p> <p>14 What more do you want him -- to ask</p> <p>15 of him?</p> <p>16 MR. MORRIS: I want him -- I would</p> <p>17 love him to say -- I would like him to</p> <p>18 testify to the truth, and that is he has no</p> <p>19 recollection.</p> <p>20 MS. DEITSCH-PEREZ: Well, the truth</p> <p>21 as you would like to see it, but -- but he</p> <p>22 is testifying truthfully. And I -- and, by</p> <p>23 the way, I move to strike that comment --</p> <p>24 MR. MORRIS: Okay.</p> <p>25 MS. DEITSCH-PEREZ: -- because it</p>	<p>Page 253</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 suggests that he has not testified</p> <p>3 truthfully.</p> <p>4 MR. MORRIS: I will ask my question</p> <p>5 again. And if at any time you want to</p> <p>6 direct him not to answer, that is your</p> <p>7 prerogative.</p> <p>8 Q. Mr. Waterhouse, do you have any</p> <p>9 recollection at all of ever telling anybody</p> <p>10 from DSI that any of these notes were doubtful</p> <p>11 or uncollectible?</p> <p>12 MS. DANDENEAU: Object to form.</p> <p>13 A. I don't remember specifically.</p> <p>14 Q. Do you remember generally that</p> <p>15 specific topic?</p> <p>16 A. We generally talked about assets,</p> <p>17 values. If -- we had discussions of that and</p> <p>18 collectability in nature. I mean, of Highland,</p> <p>19 the funds, the CLOs, the entire complex. We</p> <p>20 had discussions like that, which is, you know,</p> <p>21 as you look at a billion dollar consolidated</p> <p>22 balance sheet.</p> <p>23 So I generally remember -- this is</p> <p>24 billions of dollars, including these assets --</p> <p>25 having discussions of this -- of this type.</p>

<p>Page 254</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Do you believe that an affiliate</p> <p>3 loan on this list was doubtful or</p> <p>4 uncollectible? Would you have told that to</p> <p>5 DSI?</p> <p>6 MS. DANDENEAU: Objection to form.</p> <p>7 MS. DEITSCH-PEREZ: Object to form.</p> <p>8 A. If we had, like -- again, if we --</p> <p>9 if -- if we weren't preparing financial</p> <p>10 statements in accordance with GAAP, and -- you</p> <p>11 know, if DSI at that point -- they were --</p> <p>12 again, I was new to bankruptcy.</p> <p>13 The CRO is -- we are delegating</p> <p>14 everything to the CRO. All the decisionmaking.</p> <p>15 Remember -- remember when you and I went into</p> <p>16 Delaware Court and we were saying DSI basically</p> <p>17 does everything, remember this, Mr. Morris?</p> <p>18 You were my counsel at the time, and</p> <p>19 basically we're running everything through DSI.</p> <p>20 That was what this was like in the early part.</p> <p>21 Everything was communicated through</p> <p>22 DSI. So DSI says this. DSI says that. That</p> <p>23 is what we're doing, and we're pointing out</p> <p>24 things to them.</p> <p>25 Now, they decide what direction this</p>	<p>Page 255</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 goes.</p> <p>3 Q. Did you point out that any of</p> <p>4 these --</p> <p>5 A. I don't recall specifically.</p> <p>6 Q. Okay. At any time that you served</p> <p>7 as Highland's CFO, did you ever point out to</p> <p>8 DSI that any of these loans were doubtful or</p> <p>9 uncollectible?</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form.</p> <p>12 MS. DANDENEAU: Objection.</p> <p>13 A. If you're asking me if I had a</p> <p>14 conversation with DSI, if any of these loans</p> <p>15 were doubtful or uncollectible, I don't recall</p> <p>16 specifically.</p> <p>17 Q. Do you recall that the debtor filed</p> <p>18 on the docket monthly operating reports?</p> <p>19 A. Yes.</p> <p>20 Q. You prepared those personally,</p> <p>21 didn't you?</p> <p>22 MS. DEITSCH-PEREZ: Objection to</p> <p>23 form.</p> <p>24 A. I didn't personally prepare them,</p> <p>25 the team did with DSI.</p>
<p>Page 256</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. But you signed them; correct?</p> <p>3 A. My signature is on the MORs.</p> <p>4 Q. And you signed them as the preparer</p> <p>5 of the document; correct?</p> <p>6 A. Yes, I did this pursuant to DSI's</p> <p>7 instructions.</p> <p>8 Q. Okay. You wouldn't have signed the</p> <p>9 document if you didn't believe it to be</p> <p>10 accurate; correct?</p> <p>11 A. If I had reason to believe it</p> <p>12 wasn't, presumably I wouldn't have signed it.</p> <p>13 Q. Okay. And do you have any reason to</p> <p>14 believe right now that any monthly operating</p> <p>15 report that has your signature on it was</p> <p>16 inaccurate in any way?</p> <p>17 MS. DEITSCH-PEREZ: Object to the</p> <p>18 form.</p> <p>19 A. My understanding of the monthly</p> <p>20 operating reports is we were filing them in</p> <p>21 accordance with the standards set by the Court.</p> <p>22 It wasn't -- you know, again, I don't -- you</p> <p>23 know, it wasn't GAAP. It wasn't these other</p> <p>24 standards, so I testified I didn't have</p> <p>25 experience in this. The CRO was running the</p>	<p>Page 257</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 show. I followed their advice.</p> <p>3 Q. But you assured yourself that</p> <p>4 everything in the report was accurate before</p> <p>5 you signed them; correct?</p> <p>6 MS. DANDENEAU: Objection to form.</p> <p>7 A. I trusted the guidance from the CRO</p> <p>8 and their team and their experience and their</p> <p>9 guidance for doing this for many, many, many</p> <p>10 years to -- to -- to categorize and put things</p> <p>11 in ways on the form.</p> <p>12 You know, my team had -- had not</p> <p>13 filled out these forms before and needed all of</p> <p>14 this guidance. I'm not an expert in this. I</p> <p>15 have oversight of it. I signed the form. DSI</p> <p>16 told me to.</p> <p>17 Q. And you and your team are the source</p> <p>18 of the information that DSI used to create the</p> <p>19 reports; correct?</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 A. The books and records reside with</p> <p>22 the -- with -- with the corporate accounting</p> <p>23 team.</p> <p>24 Q. Okay. And the corporate accounting</p> <p>25 team was the corporate accounting team that was</p>

<p>Page 258</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 under your direction; correct?</p> <p>3 A. Yes.</p> <p>4 Q. So -- so your team was responsible</p> <p>5 for maintaining Highland's books and records;</p> <p>6 correct?</p> <p>7 A. I'm sorry, my team was responsible?</p> <p>8 Q. Correct.</p> <p>9 A. Yes. They -- they -- they were</p> <p>10 the -- the -- the general ledger of Highland,</p> <p>11 that responsibility was with the corporate</p> <p>12 accounting team.</p> <p>13 Q. The corporate accounting group</p> <p>14 reported to you; correct?</p> <p>15 A. Yes.</p> <p>16 MR. MORRIS: Can we put up 41,</p> <p>17 please.</p> <p>18 (Exhibit 41 marked.)</p> <p>19 Q. All right. You will see that this</p> <p>20 is a report that is dated January 31st, 2020,</p> <p>21 but it is for the month ending December 2019.</p> <p>22 Do you see that?</p> <p>23 A. I do.</p> <p>24 Q. And you signed this report in your</p> <p>25 capacity as the chief financial officer of</p>	<p>Page 259</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Highland; correct?</p> <p>3 A. Yes.</p> <p>4 Q. And you're the preparer -- you're</p> <p>5 identified as the preparer of the report;</p> <p>6 correct?</p> <p>7 A. That is correct.</p> <p>8 Q. Do you recall participating in the</p> <p>9 preparation of monthly operating reports?</p> <p>10 A. As I testified earlier, it was put</p> <p>11 together, you know, with the team. The team</p> <p>12 worked with DSI to put these monthly operating</p> <p>13 reports together. We had no experience at this</p> <p>14 time of the monthly operating reports or things</p> <p>15 of this nature.</p> <p>16 MR. MORRIS: Can you turn to the</p> <p>17 next page, please.</p> <p>18 Q. Do you see a line item under assets</p> <p>19 due from affiliates?</p> <p>20 A. Yes, I do.</p> <p>21 Q. Okay. And to the best of your</p> <p>22 knowledge and understanding, as the person who</p> <p>23 is identified as the preparer of this report,</p> <p>24 does that line item include the affiliate loans</p> <p>25 that we've been talking about?</p>
<p>Page 260</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Again, I would have to see, just</p> <p>3 like we did with the financial statements of</p> <p>4 Highland and NexPoint, I would have to see a</p> <p>5 detailed build, but, you know, if you look at</p> <p>6 the other line items, you know, the only other</p> <p>7 place it could be would be in -- in other</p> <p>8 assets.</p> <p>9 Q. Okay. And as a matter of</p> <p>10 arithmetic, is it fair to say that is the value</p> <p>11 of the assets due from affiliates was more than</p> <p>12 25 percent of the value of Highland's total</p> <p>13 assets as of 12/31/2019?</p> <p>14 MS. DANDENEAU: Objection to form.</p> <p>15 A. I'm really not doing the mental math</p> <p>16 right now, so I've been going at this depo for</p> <p>17 hours, so I'm really not -- you know --</p> <p>18 Q. All right. No problem.</p> <p>19 A. -- these are millions of dollars.</p> <p>20 Q. Let's look at the Footnote 1,</p> <p>21 please. Do you see there is a reference to the</p> <p>22 Hunter Mountain note?</p> <p>23 A. Yes, I see that in Footnote 1.</p> <p>24 Q. Okay. And that's the reserve that</p> <p>25 was taken against that note?</p>	<p>Page 261</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes, that is what this indicates.</p> <p>3 Q. Okay. And were you aware that the</p> <p>4 reserve was being taken on that it was?</p> <p>5 A. I was -- I was aware, yeah, at some</p> <p>6 point, yes.</p> <p>7 Q. Okay. And are you aware of any</p> <p>8 reserve being taken with respect to any other</p> <p>9 note that was issued in favor of Highland?</p> <p>10 A. Again, as I testified, we didn't go</p> <p>11 through an analysis on -- on -- on the other</p> <p>12 notes.</p> <p>13 Q. Can we turn --</p> <p>14 A. I believe -- I believe it says that</p> <p>15 in Footnote 1, fair value has not been</p> <p>16 determined with respect to any of the notes.</p> <p>17 So this footnote -- footnotes, look,</p> <p>18 there has been no determination.</p> <p>19 Q. Okay. The determination was made in</p> <p>20 the audited financial statements just six</p> <p>21 months earlier; right? We saw that earlier?</p> <p>22 A. That was as of 12/31/18. I mean,</p> <p>23 things -- circumstances -- there's a bank --</p> <p>24 circumstances change, things change -- things</p> <p>25 change over time, you know, facts and</p>

<p>Page 262</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 circumstances change. Again, you have to do an</p> <p>3 analysis.</p> <p>4 Q. Okay. And you do recall that in</p> <p>5 Highland's 2018 financial statement, all of the</p> <p>6 notes issued by affiliates and Mr. Dondero that</p> <p>7 were due at year-end had a fair value equal to</p> <p>8 the carrying value; correct? We looked at</p> <p>9 that?</p> <p>10 A. Yes. That was in the -- in the</p> <p>11 disclosure for the -- for the affiliate notes,</p> <p>12 yes.</p> <p>13 Q. And -- and you were obligated to</p> <p>14 share with PwC any subsequent events between</p> <p>15 the end of 2018 and the date that you signed</p> <p>16 your management representation letter on June</p> <p>17 3rd, 2019; correct?</p> <p>18 MS. DEITSCH-PEREZ: Object to the</p> <p>19 form.</p> <p>20 A. Yes. I -- I -- I signed the</p> <p>21 management, you know, my signature is in the</p> <p>22 management representation letter -- I hope I'm</p> <p>23 answering your question -- that is dated in</p> <p>24 June with the representations made in that</p> <p>25 management representation letter.</p>	<p>Page 263</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. And there was nothing that</p> <p>3 caused PricewaterhouseCoopers to include in</p> <p>4 subsequent events any adjustment to the</p> <p>5 conclusion that the fair value of the affiliate</p> <p>6 notes and the notes issued by Mr. Dondero</p> <p>7 equaled the carrying value; correct?</p> <p>8 MS. DANDENEAU: Objection to the</p> <p>9 form.</p> <p>10 A. That is correct. That is what was</p> <p>11 in the -- in the -- in the footnotes.</p> <p>12 Q. Okay. So are you aware of anything</p> <p>13 that occurred between June 3rd, 2019 and</p> <p>14 December 31st, 2019 that would have caused the</p> <p>15 fair value of the notes to differ from the</p> <p>16 carrying value?</p> <p>17 A. Yeah. Highland filed for</p> <p>18 bankruptcy, things changed -- I mean, there was</p> <p>19 a bankruptcy filed in October of -- of -- of</p> <p>20 2019, right, the petition date that we've</p> <p>21 described earlier.</p> <p>22 I mean, I had a -- I guess looking</p> <p>23 back naively, I thought we were going to get an</p> <p>24 audit from PwC for year-ended 2019, and when we</p> <p>25 had discussions with PwC, they were like, are</p>
<p>Page 264</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 you crazy, we're not auditing this. Values</p> <p>3 change, all these things change, bankruptcy</p> <p>4 changes the entire scenario. I mean -- and</p> <p>5 they're like, we're not -- we're not touching</p> <p>6 this.</p> <p>7 And so, you know, I was like, okay,</p> <p>8 sorry, I get it, okay, no an audit.</p> <p>9 I mean, it is -- you know, and --</p> <p>10 you know, and we weren't preparing GAAP</p> <p>11 financial statements.</p> <p>12 Again, I didn't know what we were</p> <p>13 doing in relation to our financial statements,</p> <p>14 but these were the discussions I was having at</p> <p>15 the time. And yeah, I mean, filing bankruptcy</p> <p>16 from what I got from outside auditors and</p> <p>17 others involved changed things dramatically.</p> <p>18 Q. Okay. Highland wasn't the obligor</p> <p>19 under any of the notes that we're talking</p> <p>20 about; correct?</p> <p>21 A. No.</p> <p>22 Q. So --</p> <p>23 A. That's right.</p> <p>24 Q. So can you identify any fact that</p> <p>25 would cause the fair value to deviate from the</p>	<p>Page 265</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 carrying value during the seven-month period</p> <p>3 between June 3rd and the end of the year, 2019?</p> <p>4 MS. DANDENEAU: Objection to form.</p> <p>5 A. No. I mean, I'm putting myself back</p> <p>6 at that time, right. Hindsight is 2020, but we</p> <p>7 didn't do an analysis, but we would have done a</p> <p>8 fulsome analysis and looked at all of the facts</p> <p>9 and circumstances at the time, but asset values</p> <p>10 change. You know, there could have been a</p> <p>11 market crash in hindsight in 2020, which --</p> <p>12 which affected entities' abilities.</p> <p>13 There could have been all of these</p> <p>14 things, right, that -- that happen. It is --</p> <p>15 it is easy to look back in hindsight, but when</p> <p>16 you are looking at this in -- in realtime, the</p> <p>17 analysis is different, and again, we didn't do</p> <p>18 an analysis.</p> <p>19 Q. Okay. You didn't do an analysis.</p> <p>20 Do I have that right?</p> <p>21 A. I don't -- I don't recall doing one</p> <p>22 or maybe -- you know, I don't recall doing one.</p> <p>23 MR. MORRIS: Okay. I'm going to</p> <p>24 take a break. I may be done, so the time</p> <p>25 now is -- is 4:30 your time. Let's just</p>

<p style="text-align: right;">Page 266</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 take a short break until 4:40 your time.</p> <p>3 MS. DANDENEAU: Okay.</p> <p>4 VIDEOGRAPHER: We're going off the</p> <p>5 record, 4:31 p.m.</p> <p>6 (Recess taken 4:31 p.m. to 4:43 p.m.)</p> <p>7 VIDEOGRAPHER: We are back on the</p> <p>8 record at 4:43 p.m.</p> <p>9 MR. MORRIS: I have no further</p> <p>10 questions.</p> <p>11 MR. RUKAVINA: Okay.</p> <p>12 Mr. Waterhouse, I will go next.</p> <p>13 EXAMINATION</p> <p>14 BY MR. RUKAVINA:</p> <p>15 Q. Sir, my name is Davor Rukavina. I'm</p> <p>16 the lawyer for --</p> <p>17 MR. MORRIS: Hey, Davor, just before</p> <p>18 you begin, I just want to put on the record</p> <p>19 Highland's objection to documents that were</p> <p>20 produced to me 10 minutes before the</p> <p>21 deposition began.</p> <p>22 MR. RUKAVINA: What the basis of</p> <p>23 your objection?</p> <p>24 MR. MORRIS: That they were due</p> <p>25 quite some time ago, and the fact that you</p>	<p style="text-align: right;">Page 267</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 had -- I just think it's appropriate to --</p> <p>3 to dump documents on somebody 10 minutes</p> <p>4 before the deposition. I just think</p> <p>5 that's --</p> <p>6 MR. RUKAVINA: Well, these are</p> <p>7 documents Highland produced. I'm not aware</p> <p>8 of any rule I have to give you advance</p> <p>9 documents when I know for the record that</p> <p>10 other than the exhibits that you sent to us</p> <p>11 last week, most of the exhibits you used</p> <p>12 today you did not provide to me prior to</p> <p>13 this deposition.</p> <p>14 MR. MORRIS: No, but the documents</p> <p>15 were produced by me in -- in litigation,</p> <p>16 right?</p> <p>17 MR. RUKAVINA: I'm going to use</p> <p>18 primarily, John, the documents that you</p> <p>19 produced to me today, but you may.</p> <p>20 MR. MORRIS: Primarily. I've got --</p> <p>21 I've got my objection. You have got your</p> <p>22 response. Proceed.</p> <p>23 Q. Mr. Waterhouse, again, I represent</p> <p>24 the advisors, HCMFA and NexPoint Advisors.</p> <p>25 Do you understand that?</p>
<p style="text-align: right;">Page 268</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. You and I have never met or talked</p> <p>4 before today, have we?</p> <p>5 A. No, I have -- I have heard your</p> <p>6 voice on calls before.</p> <p>7 Q. Okay.</p> <p>8 MR. RUKAVINA: Madam Court Reporter,</p> <p>9 I will use a few exhibits today. My</p> <p>10 associate, Mr. Nguyen, will find some way</p> <p>11 to get them to you. I don't know how to do</p> <p>12 that, but it looks like you guys do.</p> <p>13 I am going to use numbers as well.</p> <p>14 But to differentiate them from Mr. Morris</p> <p>15 we're going to mark mine with the prefix A</p> <p>16 for advisors.</p> <p>17 Do you understand?</p> <p>18 COURT REPORTER: Yes.</p> <p>19 MR. RUKAVINA: Okay. Perfect.</p> <p>20 Q. Okay. So, Mr. Waterhouse, let's</p> <p>21 start with those two HCMFA notes that you were</p> <p>22 asked about, one for 5 million and one for</p> <p>23 2.4 million.</p> <p>24 Do you recall those notes?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 269</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Were you ever the CFO of HCMFA?</p> <p>3 A. I don't recall.</p> <p>4 Q. So to the best of your recollection,</p> <p>5 you were still an officer of HCMFA in 2019,</p> <p>6 just that your title was treasurer?</p> <p>7 MR. MORRIS: Object to the form of</p> <p>8 the question. There is no leading here.</p> <p>9 He works for your client.</p> <p>10 MS. DANDENEAU: That is not -- that</p> <p>11 is not true.</p> <p>12 MR. MORRIS: He's the treasurer --</p> <p>13 he is the treasurer of your client. I</p> <p>14 don't -- I'm going to object every time you</p> <p>15 try to lead, so...</p> <p>16 MR. RUKAVINA: Totally fine to</p> <p>17 object.</p> <p>18 MR. MORRIS: Okay.</p> <p>19 Q. Please answer my question,</p> <p>20 Mr. Waterhouse.</p> <p>21 A. I'm sorry, could you repeat? There</p> <p>22 was...</p> <p>23 Q. Yes. You were -- you testified</p> <p>24 earlier that in 2019 you were an officer of</p> <p>25 HCMFA; correct?</p>

<p style="text-align: right;">Page 270</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes, I testified that I was the</p> <p>3 treasurer and I didn't know if that incumbency</p> <p>4 certificate, you know, was one that appointed</p> <p>5 me as a treasurer, but yes.</p> <p>6 Q. I'm just trying to confirm that</p> <p>7 sitting here today, to the best of your</p> <p>8 recollection, at that time you were -- your</p> <p>9 title was treasurer. It was not chief</p> <p>10 financial officer.</p> <p>11 A. I don't recall that being my title.</p> <p>12 Q. Okay. And in May of 2019, however,</p> <p>13 I think you testified you were the chief</p> <p>14 financial officer of the debtor; correct?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 A. Yes, I was -- yes.</p> <p>18 Q. Okay. As such, in May of 2019, did</p> <p>19 you have the authority, to your understanding,</p> <p>20 to unilaterally loan \$5 million or \$2.4 million</p> <p>21 to anyone on behalf of the debtor?</p> <p>22 MR. MORRIS: Objection to the form</p> <p>23 of the question.</p> <p>24 A. Sorry, can you repeat that?</p> <p>25 Q. Yes. So in your capacity as the</p>	<p style="text-align: right;">Page 271</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 chief financial officer of the debtor, Highland</p> <p>3 Capital Management, L.P., in May of 2019, did</p> <p>4 you believe that you unilaterally, just Frank</p> <p>5 Waterhouse, had the authority to loan on behalf</p> <p>6 of the debtor to anyone \$5 million and</p> <p>7 \$2.4 million?</p> <p>8 MR. MORRIS: Objection to the form</p> <p>9 of the question.</p> <p>10 A. No.</p> <p>11 Q. Is it because loans of that amount</p> <p>12 would have had to be approved by someone else?</p> <p>13 A. Yes.</p> <p>14 Q. Who in '20 -- in May of 2019, if</p> <p>15 Highland wanted to loan 5 million or</p> <p>16 \$2.4 million to someone, what would have been</p> <p>17 the internal approval procedure?</p> <p>18 MR. MORRIS: Objection to the form</p> <p>19 of the question.</p> <p>20 A. If -- if we had loans of that nature</p> <p>21 that needed to be made due to their size, we</p> <p>22 would have gotten approval from the -- the</p> <p>23 president of Highland.</p> <p>24 Q. And who that was individual?</p> <p>25 A. It was James Dondero.</p>
<p style="text-align: right;">Page 272</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Now, I'm going to ask you a</p> <p>3 similar question but for a different entity.</p> <p>4 In May of 2019, as the treasurer of</p> <p>5 HCMFA, did you believe that you unilaterally</p> <p>6 had the ability to cause HCMFA to become the</p> <p>7 borrower of a \$5 million loan and a</p> <p>8 \$2.4 million loan?</p> <p>9 MR. MORRIS: Objection to the form</p> <p>10 of the question.</p> <p>11 A. No.</p> <p>12 Q. What would -- what would the</p> <p>13 approval have taken place -- strike that.</p> <p>14 What would the approval process have</p> <p>15 been like in May of 2019 at HCMFA for HCMFA to</p> <p>16 take out a \$7.4 million loan?</p> <p>17 MR. MORRIS: Objection to the form</p> <p>18 of the question.</p> <p>19 A. The process would have been similar</p> <p>20 to what we just discussed on -- for Highland to</p> <p>21 make a loan to others. So, again, you know,</p> <p>22 we -- we would have -- either myself or someone</p> <p>23 on the team would have discussed this with</p> <p>24 the -- the president and owner of -- of HCMFA.</p> <p>25 Q. And who was that individual?</p>	<p style="text-align: right;">Page 273</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. That was James -- Jim Dondero.</p> <p>3 Q. So do I understand that in May of</p> <p>4 2019, on behalf of both the lender, Highland,</p> <p>5 and the borrower, HCMFA, Mr. Dondero would have</p> <p>6 had to approve \$7.4 million in loans?</p> <p>7 MR. MORRIS: Objection to the form</p> <p>8 of the question.</p> <p>9 A. Yes.</p> <p>10 Q. You mentioned when Mr. Morris was</p> <p>11 asking you the NAV error, N-A-V error, with</p> <p>12 respect to TerreStar, without writing us a</p> <p>13 novel, unless you feel like you have to, can</p> <p>14 you summarize what that NAV error was? What</p> <p>15 happened?</p> <p>16 A. There was a -- in the Highland</p> <p>17 Global Allocation Fund, it owned at the time an</p> <p>18 equity interest in a company called TerreStar.</p> <p>19 And TerreStar is -- at the time was a private</p> <p>20 company, and it may still be today. Again, I'm</p> <p>21 putting myself back then as a private company.</p> <p>22 We had -- sorry, I don't mean we --</p> <p>23 the fund and the advisor used Houlihan Lokey</p> <p>24 to -- to value that investment. And during</p> <p>25 that time there was some trades that were</p>

<p>Page 274</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 executed at market levels that were much lower</p> <p>3 than the Houlihan Lokey model.</p> <p>4 And based on information and</p> <p>5 discussions with the portfolio managers and,</p> <p>6 you know, principals that were very familiar</p> <p>7 with TerreStar, it was determined that those</p> <p>8 trades were non-orderly and they were not</p> <p>9 considered in the valuation as consulted with</p> <p>10 Houlihan Lokey and PricewaterhouseCoopers at</p> <p>11 the time.</p> <p>12 Subsequent to a -- I can't remember</p> <p>13 the exact circumstances of why the SEC got</p> <p>14 involved. I think it was due to this -- this</p> <p>15 investment became a material position in the</p> <p>16 fund. It triggered an SEC, kind of, inquiry.</p> <p>17 And as part of that inquiry, they questioned</p> <p>18 the valuation methodology. "They" meaning the</p> <p>19 SEC.</p> <p>20 And at the culmination of that</p> <p>21 process -- this is all summarized -- the value</p> <p>22 that was -- that ultimately had to be used in</p> <p>23 the fund's NAV was different than -- materially</p> <p>24 different than what the original valuation at</p> <p>25 Houlihan Lokey provided.</p>	<p>Page 275</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 And given that there was this fund</p> <p>3 was, as we discussed -- I don't know if we</p> <p>4 discussed it, but it was an open-ended fund</p> <p>5 that was going -- that was converting to a</p> <p>6 close-end fund.</p> <p>7 Due to the fact that it was an</p> <p>8 open-ended fund, you had to recalculate NAV and</p> <p>9 see what the impact was on people -- on</p> <p>10 investors coming in and out of the fund and if</p> <p>11 there is a detrimental impact and to calculate</p> <p>12 what that -- what that impact was and if there</p> <p>13 was any amounts owed to the fund pursuant to</p> <p>14 the error.</p> <p>15 Q. Were you personally involved</p> <p>16 internally at either Highland or HCMFA with</p> <p>17 these investigations and discussions with the</p> <p>18 SEC?</p> <p>19 A. I was.</p> <p>20 Q. Which other key people or senior</p> <p>21 people at Highland were involved, to your</p> <p>22 recollection?</p> <p>23 A. Myself, Thomas Surgent, David Klos,</p> <p>24 Lauren Thedford, Jason Post.</p> <p>25 Q. Mr. Dondero, was he --</p>
<p>Page 276</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I believe Cliff Stoops. I'm trying</p> <p>3 to think. And maybe that is -- that is -- that</p> <p>4 is -- that is all kind I can recall at the</p> <p>5 moment.</p> <p>6 Q. Do you recall whether it was</p> <p>7 determined that the fund suffered losses as a</p> <p>8 result of this error?</p> <p>9 A. The -- the fund -- the -- the --</p> <p>10 because the open-ended nature of the fund,</p> <p>11 there were losses that were attributable to</p> <p>12 investors. Meaning they -- they would have</p> <p>13 redeemed and got a less money or -- or they</p> <p>14 subscribed in and maybe because they didn't get</p> <p>15 enough shares and then they later sold and then</p> <p>16 they were harmed in that fashion.</p> <p>17 And there is -- there is -- there</p> <p>18 were very -- there were very detailed</p> <p>19 calculations and, you know, all these different</p> <p>20 scenarios that we had to -- I'm sorry, I keep</p> <p>21 saying "we" -- that the individuals involved</p> <p>22 had to calculate and quantify.</p> <p>23 Q. Well, do you recall whether HCMFA</p> <p>24 admitted certain fault and liability for this</p> <p>25 error?</p>	<p>Page 277</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't recall specifically.</p> <p>3 Q. Do you recall whether HCMFA caused</p> <p>4 any funds to be paid to the investors and the</p> <p>5 fund the subject of the NAV error?</p> <p>6 A. Yes.</p> <p>7 Q. Do you recall the approximate amount</p> <p>8 of funds, moneys paid to the investors and the</p> <p>9 fund?</p> <p>10 A. It was -- it was approximately</p> <p>11 \$7 million.</p> <p>12 Q. If I was to suggest 7.8 million,</p> <p>13 would that ring more true or are you sticking</p> <p>14 with your original answer?</p> <p>15 A. It was -- it was approximately 7 --</p> <p>16 7 to \$8 million. Again, I don't remember the</p> <p>17 exact number, but it was in that ballpark.</p> <p>18 Q. So regardless of whether HCMFA</p> <p>19 accepted fault or liability, it caused some</p> <p>20 \$7 million or more to be paid out to affected</p> <p>21 investors in the fund?</p> <p>22 MR. MORRIS: Objection to the form</p> <p>23 of the question.</p> <p>24 A. And I want to make sure I'm</p> <p>25 understanding your question because there is a</p>

<p>Page 278</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 lot of different entities that are going on to</p> <p>3 my head.</p> <p>4 I think what you are saying is based</p> <p>5 on this error, shareholders were harmed by this</p> <p>6 approximately \$7.8 million -- by approximately</p> <p>7 \$7.8 million. Is that what you are asking?</p> <p>8 Q. Yes, sir.</p> <p>9 A. Yes, that was -- again, I don't have</p> <p>10 the exact numbers. If I take -- it was -- it</p> <p>11 was in that ballpark, and there is a detail</p> <p>12 calculation and write-up that could, that --</p> <p>13 that exists someplace.</p> <p>14 Q. Now, at that time, at the time that</p> <p>15 the NAV error occurred, was there a contract in</p> <p>16 place between HCMFA and the debtor pursuant to</p> <p>17 which the debtor was providing services to</p> <p>18 HCMFA?</p> <p>19 MR. MORRIS: Objection to the form</p> <p>20 of the question.</p> <p>21 A. Yes.</p> <p>22 Q. Was that contract generally called a</p> <p>23 shared services agreement?</p> <p>24 A. It was generally called that, but</p> <p>25 there were -- there were -- I mean, it -- it --</p>	<p>Page 279</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 it depends on who you talk to, but yes,</p> <p>3 generally, there were -- there are multiple</p> <p>4 agreements.</p> <p>5 Q. Pursuant to one or more of those</p> <p>6 agreements, was the debtor providing certain</p> <p>7 services to HCMFA?</p> <p>8 MR. MORRIS: Objection to the form</p> <p>9 of the question.</p> <p>10 A. Yes.</p> <p>11 Q. And can you at a very high level</p> <p>12 summarize in 2018 and 2019 what those services</p> <p>13 were?</p> <p>14 A. Yes, there was a -- yes.</p> <p>15 Q. Okay. Please -- please go -- go</p> <p>16 through a short summary.</p> <p>17 A. There was a -- a cost reimbursement</p> <p>18 agreement between Highland Capital Management</p> <p>19 Fund Advisors and Highland Capital Management,</p> <p>20 L.P. That agreement was for what we referred</p> <p>21 to as front office services, so investment</p> <p>22 management, things of that nature.</p> <p>23 There was I think what most people</p> <p>24 refer to as the shared services agreement that</p> <p>25 was -- that agreement was between Highland</p>
<p>Page 280</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Capital Management Fund Advisors and Highland</p> <p>3 Capital Management for back office services.</p> <p>4 Q. And can you summarize what you mean</p> <p>5 by back office services?</p> <p>6 A. Those services were for accounting,</p> <p>7 finance, tax, valuation, HR, IT, you know,</p> <p>8 legal compliance, things of -- things of those</p> <p>9 nature -- or things of that nature, excuse me.</p> <p>10 Q. So in the spring of 2019, do you</p> <p>11 recall whether HCMFA took the position that it</p> <p>12 was actually Highland that caused the NAV error</p> <p>13 to occur pursuant to the valuation services</p> <p>14 that Highland was providing?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 A. I do not recall.</p> <p>18 Q. Did you ever have any discussions</p> <p>19 with anyone, Jim Dondero or anyone in the first</p> <p>20 half of 2019 as to whether Highland, the</p> <p>21 debtor, that is, had any liability to HCMFA</p> <p>22 related to the NAV error?</p> <p>23 MR. MORRIS: Objection to the form</p> <p>24 of the question.</p> <p>25 A. I do not recall.</p>	<p>Page 281</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And then you mentioned that the fund</p> <p>3 was being closed and some compensation related</p> <p>4 to that. Can you -- can you elaborate? What</p> <p>5 were you referring to?</p> <p>6 A. Right. So the advisor, pursuant to</p> <p>7 board approval, put a proposal in front of the</p> <p>8 shareholders of the Highland Global Allocation</p> <p>9 Fund to convert it from an open-ended fund to a</p> <p>10 closed-end fund.</p> <p>11 So an open-ended fund, when</p> <p>12 shareholders subscribe to the fund or redeem</p> <p>13 into the fund, they do it at NAV.</p> <p>14 When it is -- when you have a</p> <p>15 closed-end fund, closed-end funds are -- are</p> <p>16 publicly-traded, like on the New York Stock</p> <p>17 Exchange, exchanges like that, and -- and</p> <p>18 shareholders or investors, they're not --</p> <p>19 they're -- they're not subscribing and</p> <p>20 redeeming with the fund. They are like shares</p> <p>21 of Apple.</p> <p>22 Those shares of the Highland Global</p> <p>23 Allocation Fund trade on an exchange, and that</p> <p>24 is how you, you know, that is how, you know,</p> <p>25 you become an equity owner in the fund or you</p>

<p>Page 282</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 sell your shares and you are no longer an</p> <p>3 equity owner.</p> <p>4 As part of that proposal, the</p> <p>5 advisor told shareholders if you -- if you vote</p> <p>6 for this proposal to -- to convert it from an</p> <p>7 open-ended fund to a closed-end fund, we will</p> <p>8 pay you some amounts of money. I forgot -- a</p> <p>9 certain number of points. I think it was</p> <p>10 like -- it was like two to three points or</p> <p>11 something -- something like that.</p> <p>12 Q. Okay. You mentioned when Mr. Morris</p> <p>13 was asking you, going back to those two</p> <p>14 promissory notes, you will recall the 5 million</p> <p>15 and 2.4 million, you mentioned something to the</p> <p>16 effect that Mr. Dondero told -- told you to pay</p> <p>17 some moneys out of Highland. Do you remember</p> <p>18 that discussion with Mr. Morris?</p> <p>19 A. I do.</p> <p>20 Q. So, to the best of your</p> <p>21 recollection, did you have a discussion with</p> <p>22 Mr. Dondero about making some payments in May</p> <p>23 of 2019 out of Highland?</p> <p>24 A. I recall, as I testified earlier,</p> <p>25 that I had a conversation with Mr. Dondero</p>	<p>Page 283</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 for -- for these amounts attributable to -- it</p> <p>3 was either the error -- you know, the error,</p> <p>4 and in that conversation he said, go get the</p> <p>5 money from Highland. I believe that is what I</p> <p>6 testified earlier, and that -- that is my</p> <p>7 recollection.</p> <p>8 Q. Do you recall if that was an</p> <p>9 in-person meeting or some other mode for the</p> <p>10 meeting?</p> <p>11 A. I -- I -- I recall that being</p> <p>12 in-person.</p> <p>13 Q. Do you recall if anyone else was</p> <p>14 present, or was it just you and Mr. Dondero?</p> <p>15 A. I recall just he and I.</p> <p>16 Q. And the moneys that he told you to</p> <p>17 find from -- or get from Highland, was that in</p> <p>18 the amount of \$5 million and \$2.4 million?</p> <p>19 MR. MORRIS: Objection to the form</p> <p>20 of the question.</p> <p>21 A. I believe so, but I would have to go</p> <p>22 back and look and see when those moneys were</p> <p>23 actually paid into the -- into the fund and,</p> <p>24 you know, when those transfers were done. If</p> <p>25 they were all done around that same time, then</p>
<p>Page 284</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 yes, I would say it was -- it was all related</p> <p>3 to that.</p> <p>4 Q. Did Mr. Dondero tell you that those</p> <p>5 funds would be a loan from Highland to HCMFA?</p> <p>6 A. I don't recall.</p> <p>7 MR. MORRIS: Objection to the form</p> <p>8 of the question.</p> <p>9 Q. Now, and forgive me, I'm probably</p> <p>10 the only non-American born here, but I speak</p> <p>11 reasonably well in English. I don't recall,</p> <p>12 does that mean you don't remember or does that</p> <p>13 mean it didn't happen?</p> <p>14 MR. MORRIS: Objection to the form</p> <p>15 of the question.</p> <p>16 A. It -- it means I don't -- I don't</p> <p>17 remember.</p> <p>18 Q. Did Mr. Dondero tell you to have</p> <p>19 those two promissory notes prepared?</p> <p>20 A. I don't recall.</p> <p>21 Q. When you -- again, when you say, I</p> <p>22 don't recall today, that means that sitting</p> <p>23 here today, you just don't remember one way or</p> <p>24 the other. Is that accurate?</p> <p>25 A. Yes.</p>	<p>Page 285</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Is it possible that you, having</p> <p>3 heard what Mr. Dondero said and seeing funds</p> <p>4 being transferred, assumed that that would be a</p> <p>5 loan without him actually telling you that</p> <p>6 would be a loan?</p> <p>7 MR. MORRIS: Objection to the form</p> <p>8 of the question.</p> <p>9 A. Sorry, I want to make sure -- did I</p> <p>10 ask the amounts that were transferred that I --</p> <p>11 that -- that I assumed that that was a loan?</p> <p>12 Q. Well, let me -- let me take -- let</p> <p>13 me try again.</p> <p>14 So you have established already that</p> <p>15 there were quite a number of promissory notes</p> <p>16 back and forth -- I'm sorry, quite a number of</p> <p>17 promissory notes with affiliated companies and</p> <p>18 individuals owing Highland money; right?</p> <p>19 A. Yes.</p> <p>20 Q. And you have established that there</p> <p>21 were many transactions and transfers going back</p> <p>22 and forth over the years; right?</p> <p>23 MS. DANDENEAU: Objection to form.</p> <p>24 A. In -- yes, in my capacity as CFO and</p> <p>25 my employment, yes, that is -- yes.</p>

<p>Page 286</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And that's part of the reason why</p> <p>3 you just can't remember some of the details</p> <p>4 today because this -- this happened years ago,</p> <p>5 and there were a number of transactions. Is</p> <p>6 that accurate?</p> <p>7 MS. DANDENEAU: Objection to the</p> <p>8 form.</p> <p>9 MR. MORRIS: Objection to the form</p> <p>10 of the question.</p> <p>11 A. I mean, I deal with thousands of --</p> <p>12 of -- of -- of transactions, you know, whether</p> <p>13 it has -- the processing of transactions, you</p> <p>14 know, if it has got, you know, more -- more</p> <p>15 zeros, you know, behind it than others.</p> <p>16 When you look at thousands of</p> <p>17 transactions over the years for funds and</p> <p>18 advisors and -- and, you know, financial</p> <p>19 statements, I mean, it is -- it is very hard</p> <p>20 going back in -- in -- in my -- you know,</p> <p>21 14-ish year career at -- at Highland to</p> <p>22 remember a lot of those details, especially</p> <p>23 when I don't have any records or books or</p> <p>24 anything like that, and -- and going back many</p> <p>25 years.</p>	<p>Page 287</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And that is fine. That -- that --</p> <p>3 that is why I asked the question.</p> <p>4 Is it possible in May of 2019 when</p> <p>5 Mr. Dondero told you to transfer the funds from</p> <p>6 Highland, you just assumed on your own that</p> <p>7 those would be loans without him actually</p> <p>8 telling you that those would be loans?</p> <p>9 MR. MORRIS: Objection to the form</p> <p>10 of the question.</p> <p>11 A. I don't know.</p> <p>12 Q. I'm sorry, you --</p> <p>13 A. I said I don't know.</p> <p>14 Q. Okay. Well, as the -- as the CFO</p> <p>15 for Highland, if you saw \$7.4 million going</p> <p>16 out, you would feel some responsibility to</p> <p>17 account for that, wouldn't you?</p> <p>18 MR. MORRIS: Objection to the form</p> <p>19 of the question.</p> <p>20 A. Yes.</p> <p>21 Q. Is it fair to say that those would</p> <p>22 be in the range large enough to rise up to your</p> <p>23 level?</p> <p>24 MR. MORRIS: Objection to the form</p> <p>25 of the question.</p>
<p>Page 288</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. If -- I don't know if I understand</p> <p>3 your question. Those amounts would arise to my</p> <p>4 level where I would be involved or...</p> <p>5 Q. You would want to know what a</p> <p>6 transfer for that amount, \$7.4 million, was all</p> <p>7 about, as the CFO of Highland, wouldn't you?</p> <p>8 MR. MORRIS: Objection to the form</p> <p>9 of the question.</p> <p>10 A. Yes, I make it -- I mean, I -- I</p> <p>11 review all sorts of payments, I mean, even</p> <p>12 smaller dollar payments on a periodic basis,</p> <p>13 you know, to -- to -- to understand and to make</p> <p>14 sure that we are paying things in a -- you</p> <p>15 know, in -- in -- in an informed way. And, you</p> <p>16 know -- and we're -- and we're paying things</p> <p>17 pursuant to vendor contracts and things like</p> <p>18 that.</p> <p>19 Q. So as part of that, is it possible</p> <p>20 that seeing \$7.4 million go out you would have</p> <p>21 promissory notes made in order to keep a paper</p> <p>22 trail, assuming that those were loans, when</p> <p>23 perhaps they were never intended to be loans by</p> <p>24 Mr. Dondero?</p> <p>25 MR. MORRIS: Objection to the form</p>	<p>Page 289</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 of the question.</p> <p>3 A. I don't know. As I testified</p> <p>4 earlier, I had conversations with Mr. Dondero</p> <p>5 about -- about the -- the -- the moneys that</p> <p>6 were needed for the NAV error. And I recall</p> <p>7 him saying go get it from Highland -- or get it</p> <p>8 from Highland.</p> <p>9 Q. Well, why did you sign those</p> <p>10 promissory notes and why didn't you have him</p> <p>11 sign them?</p> <p>12 MR. MORRIS: Objection to the form</p> <p>13 of the question.</p> <p>14 A. I don't know. I don't know.</p> <p>15 Q. You mentioned earlier that you</p> <p>16 typically don't sign promissory notes. Am I</p> <p>17 remembering your testimony correctly?</p> <p>18 I mean, promissory notes on behalf</p> <p>19 of the entities. Not yourself, obviously.</p> <p>20 A. Yes, that is what I said earlier.</p> <p>21 Q. Do you recall any other promissory</p> <p>22 notes in the million-plus range that you had</p> <p>23 ever signed before on behalf of any entity?</p> <p>24 A. There is -- there has been a lot of</p> <p>25 transactions over the years. I don't -- I</p>

<p>Page 290</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 don't -- I don't recall generally. I don't --</p> <p>3 I don't recall.</p> <p>4 Q. So -- but to the best of your</p> <p>5 recollection, it was on your initiative,</p> <p>6 following your discussion with Mr. Dondero,</p> <p>7 that you had someone draft those two promissory</p> <p>8 notes; is that correct?</p> <p>9 MR. MORRIS: Objection to the form</p> <p>10 of the question.</p> <p>11 A. Yes, we would have -- the team, as I</p> <p>12 stated earlier, we don't draft promissory</p> <p>13 notes. "The team" meaning the accounting and</p> <p>14 finance team.</p> <p>15 So the team would have worked with</p> <p>16 the legal group at Highland to draft any notes.</p> <p>17 Q. Do you believe or do you have any</p> <p>18 recollection as to whether you would have done</p> <p>19 that pursuant to an email or telephone call or</p> <p>20 in-person meeting?</p> <p>21 MR. MORRIS: Objection to the form</p> <p>22 of the question.</p> <p>23 A. Are you asking if I would have -- if</p> <p>24 those notes would have been drafted pursuant to</p> <p>25 an email or phone call?</p>	<p>Page 291</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Strike that.</p> <p>3 Do you recall whether you sent an</p> <p>4 email to anyone asking them to draft those two</p> <p>5 promissory notes?</p> <p>6 A. I don't recall because, again,</p> <p>7 once -- I would have instructed -- likely</p> <p>8 instructed the team to -- to work with the</p> <p>9 legal group to draft these documents.</p> <p>10 I -- I -- I -- yeah, I didn't -- I</p> <p>11 mean, that is more an operational-type</p> <p>12 procedure. So, you know, a manager or a</p> <p>13 controller or working with legal. You know,</p> <p>14 they -- they can certainly handle that task to</p> <p>15 get that -- you know, to request that from</p> <p>16 legal.</p> <p>17 Q. And who on your team do you think</p> <p>18 you would have asked to do that?</p> <p>19 MR. MORRIS: Objection --</p> <p>20 Q. Who would have been the logical</p> <p>21 person or people, if you don't remember their</p> <p>22 name today?</p> <p>23 MR. MORRIS: Objection to the form</p> <p>24 of the question.</p> <p>25 A. It -- it -- there is only two</p>
<p>Page 292</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 managers of the group. That would have been</p> <p>3 Dave Klos or Kristin Hendrix.</p> <p>4 Dave was the -- one of his duties</p> <p>5 was managing the valuation team, and so he was</p> <p>6 intimately involved with this process. So, you</p> <p>7 know...</p> <p>8 Q. Okay.</p> <p>9 A. I don't recall specifically but, I</p> <p>10 mean, my general -- you know, I -- I -- I</p> <p>11 likely would have talked to Dave first about it</p> <p>12 versus someone like Kristin who hadn't been</p> <p>13 intimately involved.</p> <p>14 Q. And -- and do you have a view as to</p> <p>15 whether it is most likely that you would have</p> <p>16 done that by email or in-person or how would</p> <p>17 you believe you would have communicated that to</p> <p>18 Mr. Klos?</p> <p>19 MR. MORRIS: Objection to the form</p> <p>20 of the question.</p> <p>21 A. I likely would have done that in</p> <p>22 person. Again, if things of this nature</p> <p>23 that -- again, you have to put ourselves back</p> <p>24 to, we have been working on this very stressful</p> <p>25 project for many, many months. And once the</p>	<p>Page 293</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 go-ahead was to -- you know, we see the light</p> <p>3 at the end of the tunnel with wrapping this up</p> <p>4 and making shareholders whole -- sorry to say</p> <p>5 "we" -- you know, the -- so the folks that are</p> <p>6 involved in it.</p> <p>7 I like to talk to people</p> <p>8 face-to-face and -- and -- and go to -- and go</p> <p>9 to their desk, because that shows if I'm going</p> <p>10 to their desk that -- that is something that I</p> <p>11 want done, you know.</p> <p>12 Q. And do you remember, Mr. Waterhouse,</p> <p>13 getting those two promissory notes in paper</p> <p>14 format or by email before they were executed?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 A. I don't recall.</p> <p>18 Q. For whatever was the ordinary course</p> <p>19 back then in May 2019, would you expect to have</p> <p>20 received them only on paper or would you have</p> <p>21 expected to have received them in Word document</p> <p>22 or PDF document by email?</p> <p>23 MR. MORRIS: Objection to the form</p> <p>24 of the question.</p> <p>25 A. I -- I didn't sign -- I signed very</p>

<p>Page 294</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 few documents via email. I can't say that it</p> <p>3 never happened, but people either stopped by my</p> <p>4 office and physically walked in documents for</p> <p>5 signature that we discussed face-to-face.</p> <p>6 Or documents were -- if -- if --</p> <p>7 if -- if -- let's say I wasn't there or I</p> <p>8 wasn't available, documents were dropped off.</p> <p>9 I had -- I had some in- and outboxes in front</p> <p>10 of my -- my office there at the Crescent.</p> <p>11 Documents would be dropped off for</p> <p>12 signature. There would be a cover sheet that</p> <p>13 would be -- have been applied to those</p> <p>14 documents detailing, you know, who dropped it</p> <p>15 off, the purpose, why, what time.</p> <p>16 And then, you know, as I stated, I</p> <p>17 don't draft documents and I always go to the</p> <p>18 legal group and the compliance group to make</p> <p>19 sure that they're in the loop. And there is</p> <p>20 a -- a box or section that says, Has legal</p> <p>21 reviewed or approved, or something to that</p> <p>22 nature.</p> <p>23 Again, I don't -- I don't have</p> <p>24 access to that cover sheet anymore, but it</p> <p>25 was -- it was something to that effect.</p>	<p>Page 295</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 And my assistant, you know, if she</p> <p>3 was there, she would review that -- you know,</p> <p>4 whatever was being dropped off. And if that</p> <p>5 has legal, you know, reviewed or -- reviewed or</p> <p>6 approved it, if that wasn't -- if that stuff</p> <p>7 hadn't been done, it was like she would just</p> <p>8 tell them like, go -- go -- go to the legal</p> <p>9 group, because --</p> <p>10 Q. Let me -- let me pause --</p> <p>11 MS. DANDENEAU: Let him finish.</p> <p>12 MR. MORRIS: Thank you. Go ahead.</p> <p>13 A. I take -- go to the legal group</p> <p>14 because that -- that was my -- you know, I</p> <p>15 didn't -- I didn't review anything that -- that</p> <p>16 they weren't -- you know, or there wasn't some</p> <p>17 representation made to me that they had</p> <p>18 reviewed, approved in some capacity.</p> <p>19 Again, my -- my -- my goal, as CFO,</p> <p>20 is to provide transparency and make sure that</p> <p>21 groups like compliance and other things -- and</p> <p>22 the other group in legal are -- are in -- you</p> <p>23 know, their -- they're made aware of</p> <p>24 transactions of -- you know, that are crossing</p> <p>25 my desk.</p>
<p>Page 296</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Because I'm not in every</p> <p>3 conversation. They're not in every</p> <p>4 conversation -- meaning legal compliance -- and</p> <p>5 I just want to make sure that -- that everyone</p> <p>6 is in sync to, you know, to -- to the extent</p> <p>7 possible.</p> <p>8 Q. So if we summarize, you don't</p> <p>9 specifically remember signing these two notes,</p> <p>10 but most likely it would have been that they</p> <p>11 would have presented -- been presented to you</p> <p>12 physically on paper?</p> <p>13 MR. MORRIS: Objection to the form</p> <p>14 of the question.</p> <p>15 A. They would -- they would have been</p> <p>16 presented physically on paper most likely or</p> <p>17 someone would have left it. But, I mean,</p> <p>18 again, I don't -- I don't recall.</p> <p>19 Q. I understand. Understand.</p> <p>20 When you signed -- when you signed</p> <p>21 documents, when you personally signed</p> <p>22 documents, did you typically use a ink pen or</p> <p>23 did you use a stamp?</p> <p>24 A. No, I -- I -- I use a -- an -- an</p> <p>25 ink pen.</p>	<p>Page 297</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Do you know -- was there a file at</p> <p>3 Highland kept anywhere with ink-signed</p> <p>4 originals of a promissory notes in general or</p> <p>5 these two promissory notes specifically?</p> <p>6 MR. MORRIS: Objection to the form</p> <p>7 of the question.</p> <p>8 A. Sorry, I just want to make sure I</p> <p>9 understand your question. Are you saying is</p> <p>10 there a file somewhere that has ink-signed</p> <p>11 originals of these two promissory notes?</p> <p>12 Q. Yes.</p> <p>13 A. I would -- I would assume they're</p> <p>14 some place. I mean --</p> <p>15 Q. Well, was there a -- was there a</p> <p>16 place where Highland generally kept originals</p> <p>17 of promissory notes owed to it?</p> <p>18 A. I wouldn't -- no.</p> <p>19 MR. RUKAVINA: Mr. Nguyen, would you</p> <p>20 please pull up my A7, alpha 7.</p> <p>21 Q. These are the two promissory notes,</p> <p>22 Mr. Waterhouse.</p> <p>23 (Exhibit A7 marked.)</p> <p>24 Q. And please -- Mr. Waterhouse, please</p> <p>25 command my associate to scroll down as you need</p>

<p>Page 298</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 to, but I want you to take a very close look at</p> <p>3 your two signatures here and tell me whether</p> <p>4 you believe, in fact, that you ink signed them</p> <p>5 or whether you --</p> <p>6 MS. DANDENEAU: Mr. Rukavina,</p> <p>7 Mr. Waterhouse has the copies.</p> <p>8 MR. RUKAVINA: Perfect. Then you</p> <p>9 can take this down, Mr. Nguyen.</p> <p>10 A. These -- these -- these signatures</p> <p>11 are identical, now that I stare at them, and I</p> <p>12 mean, they are so close -- I mean, they're</p> <p>13 identical that, I mean, even with my chicken</p> <p>14 scratch signature, I don't know if I can -- you</p> <p>15 know, I do this 100 times, could I do that</p> <p>16 as -- as precisely as I see between the two</p> <p>17 notes.</p> <p>18 Q. Well, that is why I ask.</p> <p>19 Mr. Waterhouse, now that you have examined</p> <p>20 them, does it seem like it is more likely that</p> <p>21 you actually electronically signed these?</p> <p>22 MR. MORRIS: Objection to the form</p> <p>23 of the question.</p> <p>24 A. Is -- I don't -- I don't recall</p> <p>25 specifically. As I said before, my assistant</p>	<p>Page 299</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 did have a -- an electronic signature, and that</p> <p>3 was used from time to time. It wasn't as</p> <p>4 common practice back in 2019. It definitely</p> <p>5 was more common practice when we had to work</p> <p>6 from home and remotely for COVID because it</p> <p>7 that made it almost impossible to, right,</p> <p>8 provide wet signatures since we're all working</p> <p>9 from home remotely.</p> <p>10 Q. Well, going just for these two</p> <p>11 promissory notes, Mr. Waterhouse, in light of</p> <p>12 your inability to remember any details, are you</p> <p>13 sure you actually signed either or both of</p> <p>14 those notes?</p> <p>15 MS. DANDENEAU: Objection to form.</p> <p>16 A. I don't recall specifically</p> <p>17 signing -- actually physically signing these</p> <p>18 notes. As I said before, I don't recall doing</p> <p>19 that. This -- this looks like my signature,</p> <p>20 but yet these two signatures are identical.</p> <p>21 Q. So you don't recall physically</p> <p>22 signing them, and I take it you don't recall</p> <p>23 electronically signing them either?</p> <p>24 A. I don't recall. You know, Highland</p> <p>25 has all my emails. If that occurred, you know,</p>
<p>Page 300</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 you know, I don't have any of these records is</p> <p>3 what I'm saying. I don't have any of those</p> <p>4 records.</p> <p>5 Q. That is why I'm asking you these</p> <p>6 questions in great detail because I don't have</p> <p>7 those emails. I'm trying to -- I'm hoping that</p> <p>8 you will give me some names or some details so</p> <p>9 I can go look for more emails, but again, you</p> <p>10 don't remember any -- any individual, other</p> <p>11 than Mr. Dondero that we've discussed, you</p> <p>12 don't remember any individual with whom you</p> <p>13 discussed these promissory notes prior to their</p> <p>14 execution?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 A. I don't recall discussing it with</p> <p>18 anybody else.</p> <p>19 Q. Okay.</p> <p>20 A. I mean, prior --</p> <p>21 Q. I understand.</p> <p>22 A. You know, there was no one else --</p> <p>23 there was no one else in that meeting that I</p> <p>24 recall with Mr. Dondero.</p> <p>25 Q. Now, when you established that by</p>	<p>Page 301</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 May of 2019 --</p> <p>3 A. And -- and from what I recall, and</p> <p>4 the reason why I was by myself is -- is, you</p> <p>5 know, I don't -- I don't want to speculate, I'm</p> <p>6 sorry.</p> <p>7 Q. Okay. We have established that by</p> <p>8 May of 2019, in your view, the liabilities of</p> <p>9 HCMFA exceeded its assets; correct?</p> <p>10 A. Yeah. I mean, again, I don't have</p> <p>11 financial statements in front of me, but I</p> <p>12 think, if I recall, we'd have to go through the</p> <p>13 testimony with Mr. Morris, I believe that was</p> <p>14 the case.</p> <p>15 Q. In fact, you will recall that in</p> <p>16 April of 2019, Mr. Dondero signed a document</p> <p>17 that extended the demand feature of two prior</p> <p>18 notes to May 31, 2019. Do you recall that?</p> <p>19 MS. DEITSCH-PEREZ: I think you</p> <p>20 might -- maybe have the court reporter read</p> <p>21 that back. You might have misspoke.</p> <p>22 (Record read.)</p> <p>23 MR. RUKAVINA: And I did misspeak.</p> <p>24 Q. I meant to say to May 31, 2021. Do</p> <p>25 you recall that, sir?</p>

<p>Page 302</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MR. MORRIS: Objection to the form</p> <p>3 of the question.</p> <p>4 A. Yes.</p> <p>5 MR. RUKAVINA: And, Mr. Nguyen, just</p> <p>6 so that the record is clear, will you please</p> <p>7 pull up my Exhibit Alpha 10, A10.</p> <p>8 (Exhibit A10 marked.)</p> <p>9 Q. You don't have this one in front of</p> <p>10 you, Mr. Waterhouse? This is the one that</p> <p>11 Mr. Morris used earlier. Do you see that</p> <p>12 document, sir?</p> <p>13 A. Yes, I do.</p> <p>14 Q. And this is what you were testifying</p> <p>15 about before when Mr. Morris was asking you.</p> <p>16 Do you remember that?</p> <p>17 A. Yes.</p> <p>18 Q. So here is my question for you,</p> <p>19 Mr. Waterhouse: As the chief financial officer</p> <p>20 of Highland, was it prudent for Highland less</p> <p>21 than three weeks later to be lending</p> <p>22 \$7.2 million to an insolvent entity that</p> <p>23 couldn't even then pay its debts back to</p> <p>24 Highland?</p> <p>25 MS. DANDENEAU: Objection to form.</p>	<p>Page 303</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MR. MORRIS: Objection to the form</p> <p>3 of the question.</p> <p>4 A. Sorry, I just want to make sure --</p> <p>5 are you asking me, did you say, was it prudent</p> <p>6 for Highland to loan \$7.4 million to HCMFA a</p> <p>7 few weeks after this document was executed?</p> <p>8 Q. Yes, and at a time when HCMFA's</p> <p>9 liabilities exceeded its assets.</p> <p>10 MR. MORRIS: Objection to the form</p> <p>11 of the question.</p> <p>12 A. I don't -- it is odd. I don't know.</p> <p>13 MR. RUKAVINA: You can take this</p> <p>14 exhibit down, Mr. Nguyen.</p> <p>15 Q. Do you recall asking anyone,</p> <p>16 Mr. Dondero or -- or anyone outside as to</p> <p>17 whether Highland ought to be lending</p> <p>18 \$7.4 million to HCMF regarding HCMF's</p> <p>19 creditworthiness?</p> <p>20 MR. MORRIS: Objection to the form</p> <p>21 of the question.</p> <p>22 A. I don't recall.</p> <p>23 Q. Did you receive personally any of</p> <p>24 that \$7.4 million?</p> <p>25 A. No.</p>
<p>Page 304</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Did you even --</p> <p>3 MR. MORRIS: I didn't hear that</p> <p>4 question, sir.</p> <p>5 MR. RUKAVINA: The one that he</p> <p>6 answered, John, or my new one?</p> <p>7 MR. MORRIS: No, no, your question,</p> <p>8 Davor.</p> <p>9 MR. RUKAVINA: I had asked him</p> <p>10 whether he received any of the</p> <p>11 \$7.4 million. He said no.</p> <p>12 MR. MORRIS: Yeah. I thought there</p> <p>13 was a question after that. Maybe I was</p> <p>14 mistaken. I apologize.</p> <p>15 MR. RUKAVINA: I had started a new</p> <p>16 question, so here, let me start the new</p> <p>17 question again.</p> <p>18 Q. Did you personally receive any</p> <p>19 direct benefit from those two notes for</p> <p>20 \$7.4 million?</p> <p>21 A. No.</p> <p>22 Q. Did you ever personally consider</p> <p>23 yourself obligated to repay either or both of</p> <p>24 those notes?</p> <p>25 A. No.</p>	<p>Page 305</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MR. RUKAVINA: Pull up those notes</p> <p>3 again, Mr. Nguyen.</p> <p>4 Q. You can have them in front of you,</p> <p>5 Exhibit 7, Mr. Waterhouse, whatever is easier</p> <p>6 for you. If you go to your signature page, my</p> <p>7 question to you is, why did you not include</p> <p>8 your title as treasurer by your name, Frank</p> <p>9 Waterhouse?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 A. I didn't -- I didn't draft this</p> <p>12 document.</p> <p>13 Q. So you relied on whoever drafted it</p> <p>14 to draft it correctly?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. But back then when you signed</p> <p>17 this, did it ever cross your mind that you were</p> <p>18 the maker on these notes?</p> <p>19 A. No.</p> <p>20 Q. Back then when you signed this</p> <p>21 document, did it ever cross your mind that you</p> <p>22 could be a co-obligor on these notes?</p> <p>23 A. No. I didn't receive \$7.4 million,</p> <p>24 I mean...</p> <p>25 Q. But can you say that HCMFA received</p>

<p>Page 306</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 \$7.4 million?</p> <p>3 A. I would have to go back and look and</p> <p>4 check in, you know, the -- the financial</p> <p>5 records and the bank statements.</p> <p>6 MR. RUKAVINA: You can take this</p> <p>7 exhibit down, Mr. Nguyen.</p> <p>8 Q. Mr. Waterhouse, I'm not trying to be</p> <p>9 a smart-ass, but if the law says that because</p> <p>10 of the way that you signed this promissory</p> <p>11 note, if that is what the law says, that that</p> <p>12 made you personally -- personally liable, then</p> <p>13 you would agree with me that that was never</p> <p>14 your intent?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 A. That was never -- I wouldn't sign a</p> <p>18 note and not get consideration in return.</p> <p>19 Q. So putting all other issues aside,</p> <p>20 if the law -- if the law says that you were</p> <p>21 liable for those notes because of how you</p> <p>22 signed them, then would you agree with me that</p> <p>23 these notes are a mistake?</p> <p>24 MR. MORRIS: Objection to the form</p> <p>25 of the question.</p>	<p>Page 307</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MS. DANDENEAU: Objection to the</p> <p>3 form.</p> <p>4 A. Yes.</p> <p>5 Q. So do you agree with me that it's</p> <p>6 odd -- I think that is the word you used --</p> <p>7 that Highland would be loaning \$7.4 million a</p> <p>8 few weeks after that extension to an entity</p> <p>9 whose liabilities exceeded its assets, and you</p> <p>10 would agree with me that it was never your</p> <p>11 intention to be in any way liable for these two</p> <p>12 promissory notes; correct?</p> <p>13 MR. MORRIS: Objection to the form</p> <p>14 of the question.</p> <p>15 A. Sorry, you -- you asked a lot there.</p> <p>16 MR. RUKAVINA: I will strike it and</p> <p>17 I will move on.</p> <p>18 Let's go to -- pull up Exhibit 9,</p> <p>19 please Mr. Nguyen -- Alpha 9, I'm sorry, Alpha</p> <p>20 9, A9.</p> <p>21 (Exhibit A9 marked.)</p> <p>22 Q. Sir, take a moment to look at this,</p> <p>23 but this is an email, and you will see attached</p> <p>24 July 31, 2020 affiliate notes.</p> <p>25 Do you see that attachment?</p>
<p>Page 308</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And do you see an entry for</p> <p>4 Highland Capital Management Fund Advisors?</p> <p>5 MR. MORRIS: I'm sorry, hold on.</p> <p>6 Where are you looking?</p> <p>7 MR. RUKAVINA: Last page, John.</p> <p>8 MR. MORRIS: Is it the page on the</p> <p>9 screen?</p> <p>10 MR. RUKAVINA: Oh, I'm sorry.</p> <p>11 Mr. Nguyen just did it. Yes, the last page</p> <p>12 there.</p> <p>13 MR. MORRIS: Thank you.</p> <p>14 Q. Do you see an entry there for HCMFA?</p> <p>15 A. Yes.</p> <p>16 Q. About \$10.5 million.</p> <p>17 Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. And, now, do you have any</p> <p>20 explanation for why if HCMFA owed \$7.4 million,</p> <p>21 plus the 5.3 million that had been extended,</p> <p>22 why that amount was only 10.5 million?</p> <p>23 A. I don't know. Okay.</p> <p>24 MR. RUKAVINA: Close this one and</p> <p>25 pull up, Mr. Nguyen, the schedules,</p>	<p>Page 309</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 schedule of assets. What exhibit is this</p> <p>3 of ours, Mr. Nguyen?</p> <p>4 MR. NGUYEN: This is A11.</p> <p>5 MR. RUKAVINA: Oh, this will be A11.</p> <p>6 (Exhibit A11 marked.)</p> <p>7 Q. You don't have this in front of you,</p> <p>8 Mr. Waterhouse?</p> <p>9 A. Okay.</p> <p>10 Q. This is what Mr. Morris used</p> <p>11 earlier. Do you remember looking at this with</p> <p>12 Mr. Morris?</p> <p>13 A. Yes.</p> <p>14 MR. RUKAVINA: You might have to</p> <p>15 zoom in a little. Okay.</p> <p>16 Q. Now, I see Affiliate Note A, B, and</p> <p>17 C.</p> <p>18 Do you have any recollection as to</p> <p>19 why the names of the affiliates are omitted?</p> <p>20 A. I don't. I testified earlier that,</p> <p>21 you know, the team worked with DSI in providing</p> <p>22 these. I -- I don't -- I don't know.</p> <p>23 Q. Can we deduce -- is it logical to</p> <p>24 deduce that Affiliate Note A would be NexPoint</p> <p>25 given its size of \$24.5 million?</p>

<p style="text-align: right;">Page 310</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MR. MORRIS: Objection to the form</p> <p>3 of the question.</p> <p>4 A. I mean, it -- it is a -- it is -- it</p> <p>5 is approximate.</p> <p>6 Q. Well, can we -- can we deduce -- or,</p> <p>7 I'm sorry, strike that.</p> <p>8 Can you, sitting here today,</p> <p>9 logically conclude that Affiliate Note B or C</p> <p>10 represents HCMFA?</p> <p>11 MR. MORRIS: Objection to the form</p> <p>12 of the question.</p> <p>13 A. I don't know. I don't know. I</p> <p>14 can't.</p> <p>15 Q. Okay. As of the petition date, we</p> <p>16 have established that HCMFA, under promissory</p> <p>17 notes, owed \$7.4 million and \$5.3 million to</p> <p>18 the debtor; correct?</p> <p>19 MR. MORRIS: Objection to the form</p> <p>20 of the question.</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And by my reckoning, that</p> <p>23 would be somewhere approaching \$13 million.</p> <p>24 MR. MORRIS: Objection to the form</p> <p>25 of the question.</p>	<p style="text-align: right;">Page 311</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. It would be \$12.7 million. Is that</p> <p>3 generally correct?</p> <p>4 A. Sorry, the amounts were 7.4, 5.3.</p> <p>5 Q. Yes.</p> <p>6 A. Okay. Yeah, that -- that -- I can</p> <p>7 do that math, yes.</p> <p>8 Q. Do you have any explanation or any</p> <p>9 understanding of why there is no similar entry</p> <p>10 listed here on the schedule of assets filed</p> <p>11 with the bankruptcy court?</p> <p>12 MR. MORRIS: Objection to the form</p> <p>13 of the question.</p> <p>14 A. I don't know. We have to look at</p> <p>15 the supporting schedules, like I talked about</p> <p>16 other -- presumably there is -- there is a</p> <p>17 build to the schedule that would provide the</p> <p>18 detail.</p> <p>19 Q. Well, that was going to be my next</p> <p>20 question. You anticipated it.</p> <p>21 MR. RUKAVINA: You can -- you can</p> <p>22 take this down, Mr. Nguyen.</p> <p>23 Q. Do you believe that whenever you and</p> <p>24 your team provided the underlying data to the</p> <p>25 financial advisor that the actual names of the</p>
<p style="text-align: right;">Page 312</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 affiliates for Affiliate Note A, B, and C would</p> <p>3 have been listed there?</p> <p>4 A. Are you asking we provided the names</p> <p>5 to the financial advisor? I don't -- I don't</p> <p>6 understand who the financial advisor is.</p> <p>7 Q. I'm sorry, DSI.</p> <p>8 Let me ask the question this way,</p> <p>9 Mr. Waterhouse.</p> <p>10 Whenever you provided information</p> <p>11 about the affiliate notes to DSI, do you</p> <p>12 believe that you would have included the actual</p> <p>13 names of the affiliates, you or your team, or</p> <p>14 that you would have done the Affiliate Note A,</p> <p>15 Note B, Note C?</p> <p>16 MR. MORRIS: Objection to the form</p> <p>17 of the question.</p> <p>18 MS. DANDENEAU: Objection to the</p> <p>19 form.</p> <p>20 A. We -- like I testified earlier, when</p> <p>21 we were -- we gave everything to -- to DSI. We</p> <p>22 were giving all of our records, all of our</p> <p>23 files, everything to DSI. We weren't redacting</p> <p>24 information or saying, hey, here is a note,</p> <p>25 here is Affiliate Note A or B.</p>	<p style="text-align: right;">Page 313</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 I mean, it was -- our job and our</p> <p>3 focus -- and I testified in court back in 2019;</p> <p>4 right -- was -- was to be transparent and, you</p> <p>5 know, get DSI up to speed on -- on the matters</p> <p>6 at Highland. So I can't see us redacting at</p> <p>7 that point.</p> <p>8 MR. RUKAVINA: Mr. Nguyen, will you</p> <p>9 please pull up Mr. Morris' Exhibit 36.</p> <p>10 Just the very first page, the very top</p> <p>11 email. You might zoom in a little bit.</p> <p>12 Q. Now, you recall being asked about</p> <p>13 this by Mr. Morris?</p> <p>14 A. Yes, I do.</p> <p>15 Q. And you wrote: The HCMFA note is a</p> <p>16 demand note.</p> <p>17 You wrote that; right?</p> <p>18 A. Yes.</p> <p>19 Q. And, in fact, weren't there by that</p> <p>20 point in time several notes?</p> <p>21 A. Yes, there were. Again, I don't --</p> <p>22 I don't remember everything specifically. I</p> <p>23 mean --</p> <p>24 Q. I understand. I understand.</p> <p>25 So this is an example where -- where</p>

<p>Page 314</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 you might have made a mistake by referring to a</p> <p>3 singular instead of a plural; right?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And you -- you wrote -- a</p> <p>6 couple of sentences later, you wrote: There</p> <p>7 was an agreement between HCMLP and HCMFA the</p> <p>8 earliest they could demand is May 2021.</p> <p>9 You wrote that; right?</p> <p>10 A. Yes.</p> <p>11 Q. But I think you -- you agreed with</p> <p>12 Mr. Morris that that can't possibly apply to</p> <p>13 the May 2019 notes, can it?</p> <p>14 MR. MORRIS: Objection to the form</p> <p>15 of the question. That is not what he</p> <p>16 testified to.</p> <p>17 Q. Let me ask -- let me ask a different</p> <p>18 question.</p> <p>19 Sitting here today -- or if you can</p> <p>20 answer me from your memory on October 6,</p> <p>21 2020 -- did the April acknowledgment that</p> <p>22 extended the maturity date apply to the</p> <p>23 May 2019 notes also?</p> <p>24 A. I don't recall specifically.</p> <p>25 Q. Well, you recall that the notes that</p>	<p>Page 315</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 you signed were demand notes; right?</p> <p>3 A. Yes.</p> <p>4 Q. Do you find it logical, based on</p> <p>5 your experience, that had they intended to have</p> <p>6 a different or a set maturity date, you would</p> <p>7 have instructed that that set maturity date be</p> <p>8 included instead of a demand feature?</p> <p>9 MR. MORRIS: Objection to the form</p> <p>10 of the question.</p> <p>11 A. Sorry, just want to make sure I</p> <p>12 understand. You are saying that -- that the</p> <p>13 \$5 million note, the \$2.4 million note, if</p> <p>14 those were supposed to be a term note, that I</p> <p>15 would have made sure that those were a term</p> <p>16 note?</p> <p>17 Q. I'm saying -- I'm saying,</p> <p>18 Mr. Waterhouse, that on May the 2nd and May the</p> <p>19 3rd, 2019, if you intended that those two</p> <p>20 promissory notes could not be called until May</p> <p>21 2021, would you have included such language in</p> <p>22 those two promissory notes?</p> <p>23 MR. MORRIS: Objection to the form</p> <p>24 of the question.</p> <p>25 A. I guess -- I'm sorry, I don't recall</p>
<p>Page 316</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 putting language in those May notes. I don't</p> <p>3 remember what language you are referring to.</p> <p>4 Q. Well, let's read this again.</p> <p>5 There was an agreement between HCMLP</p> <p>6 and HCMFA the earliest they could demand is May</p> <p>7 2021.</p> <p>8 Do you recall that agreement?</p> <p>9 A. Yes, that was the agreement we</p> <p>10 looked at earlier; correct?</p> <p>11 Q. Okay. Yes.</p> <p>12 Do you -- do you understand now that</p> <p>13 that agreement that we looked at earlier also</p> <p>14 applied to the May 2019 notes that you signed?</p> <p>15 A. I don't -- I don't know.</p> <p>16 Q. But as of October 6, 2020, you're</p> <p>17 writing that there is one demand note and</p> <p>18 you're categorizing that demand note as not</p> <p>19 being demandable on May 2021; correct?</p> <p>20 A. Yes.</p> <p>21 Q. And you know now that you made at</p> <p>22 least one mistake in this email; correct?</p> <p>23 MR. MORRIS: Objection to the form</p> <p>24 of the question.</p> <p>25 A. Yes.</p>	<p>Page 317</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MR. RUKAVINA: You can pull this</p> <p>3 down, Mr. Nguyen.</p> <p>4 Q. So, Mr. Waterhouse, you don't</p> <p>5 remember Mr. Dondero telling you to make these</p> <p>6 loans or not. HCMLP was loaning \$7.4 million</p> <p>7 to someone that their assets were less than</p> <p>8 their liabilities.</p> <p>9 We don't see on the July list of</p> <p>10 notes, where there is \$12.7 million of notes,</p> <p>11 we don't see that on the bankruptcy schedules,</p> <p>12 and we have this Exhibit 36 where you are</p> <p>13 confused.</p> <p>14 Are you prepared to tell me, sir,</p> <p>15 today that you might have made a mistake in</p> <p>16 executing those two promissory notes?</p> <p>17 MR. MORRIS: Objection to the form</p> <p>18 of the question.</p> <p>19 A. I -- I don't know.</p> <p>20 Q. And if it turns out that you're</p> <p>21 personally liable for those promissory notes,</p> <p>22 it would certainly be a mistake, wouldn't it?</p> <p>23 MS. DANDENEAU: Objection to the</p> <p>24 form.</p> <p>25 MR. MORRIS: Join.</p>

<p style="text-align: right;">Page 318</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. If Mr. Dondero testifies that he</p> <p>4 never told you to make these loans, would you</p> <p>5 disagree with his testimony?</p> <p>6 MR. MORRIS: Objection to the form</p> <p>7 of the question.</p> <p>8 A. Like I testified earlier with my</p> <p>9 conversation with Mr. Dondero, all I recall is</p> <p>10 he said, get the money from Highland.</p> <p>11 Q. And if Mr. Dondero testifies that</p> <p>12 he, in consultation with other senior personnel</p> <p>13 at Highland, decided that Highland needed to</p> <p>14 pay HCMFA \$7.4 million as compensation for the</p> <p>15 NAV error and not a loan, would you have any</p> <p>16 reason to disagree with Mr. Dondero?</p> <p>17 MR. MORRIS: Objection to the form</p> <p>18 of the question.</p> <p>19 A. If that was -- if that was his</p> <p>20 intent, yes, it would -- I would --</p> <p>21 Q. Do you have any reason to disagree</p> <p>22 with him?</p> <p>23 MR. MORRIS: Objection to the form</p> <p>24 of the question.</p> <p>25 A. If that was his intent, I don't</p>	<p style="text-align: right;">Page 319</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 know. I don't know how I disagree with that.</p> <p>3 Q. And just to confirm, you don't</p> <p>4 remember ever asking Mr. Dondero whether you</p> <p>5 should have two promissory notes prepared?</p> <p>6 A. No.</p> <p>7 Q. And you don't remember discussing</p> <p>8 with Mr. Dondero what the terms of those two</p> <p>9 promissory notes should be?</p> <p>10 A. I don't recall -- I testified all I</p> <p>11 recall is he said, get the money from Highland.</p> <p>12 I don't -- the -- the terms of the note, I</p> <p>13 don't recall ever having a discussion around</p> <p>14 the terms of the note, but since I don't draft</p> <p>15 the notes, that -- there could have been a</p> <p>16 conversation with other people later.</p> <p>17 Q. Do you have any memory of whether</p> <p>18 after the notes were drafted, but before you</p> <p>19 signed them, that you communicated with</p> <p>20 Mr. Dondero in any way to just confirm or -- or</p> <p>21 get his blessing or ratification to signing</p> <p>22 those notes?</p> <p>23 MR. MORRIS: Objection to the form</p> <p>24 of the question.</p> <p>25 A. I don't recall.</p>
<p style="text-align: right;">Page 320</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Again, the only thing you remember,</p> <p>3 sitting here today, was Mr. Dondero said, get</p> <p>4 the money from Highland, and that is it, that</p> <p>5 is all you remember?</p> <p>6 MR. MORRIS: Objection to the form</p> <p>7 of the question.</p> <p>8 A. I testified to that several times.</p> <p>9 This was over two years ago. A lot has</p> <p>10 happened. That is all I recall.</p> <p>11 Q. And help me here. I'm not very</p> <p>12 technologically astute. When you -- and I -- I</p> <p>13 recognize that you do it rarely, but when you</p> <p>14 sign a document electronically, do you believe</p> <p>15 that there is an electronic record of you</p> <p>16 having authorized or signed a document</p> <p>17 electronically?</p> <p>18 MR. MORRIS: Objection to the form</p> <p>19 of the question.</p> <p>20 A. I -- I don't know the tech answer to</p> <p>21 that, but, you know, since I don't have -- I</p> <p>22 don't ever attach my signature block</p> <p>23 electronically, my assistant would have done</p> <p>24 that, and if that is done over email like we</p> <p>25 did several times -- you know, multiple,</p>	<p style="text-align: right;">Page 321</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 multiple times over COVID, she would attach my</p> <p>3 signature block and then email it out to</p> <p>4 whatever party.</p> <p>5 Q. What was your assistant's name in</p> <p>6 May 2019?</p> <p>7 A. It was Naomi Chisum.</p> <p>8 Q. Is she the only one? I'm sorry, was</p> <p>9 she your only assistant that would have maybe</p> <p>10 facilitated logistically something like you</p> <p>11 just described?</p> <p>12 A. You know, she was out on maternity</p> <p>13 leave at some point. I don't -- I don't recall</p> <p>14 those dates where she was out for maternity</p> <p>15 leave. There was -- there were folks backing</p> <p>16 her up. I don't recall specifically who</p> <p>17 those -- who those, you know, administrative</p> <p>18 assistants were, and I don't recall</p> <p>19 specifically if she was out during this time on</p> <p>20 maternity leave.</p> <p>21 I do know that that she was out for</p> <p>22 a period of time, or who knows, or she could</p> <p>23 have been on vacation that day or, you know, I</p> <p>24 don't know.</p> <p>25 Q. Switching gears now, the two</p>

<p>Page 322</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 complaints that have been filed that is against</p> <p>3 HCMFA and NexPoint, did you see any drafts of</p> <p>4 those complaints before they were filed?</p> <p>5 MR. MORRIS: Objection to the form</p> <p>6 of the question, and to the extent that you</p> <p>7 had any communications with counsel or you</p> <p>8 were shown drafts of the complaints by</p> <p>9 counsel while you were employed by</p> <p>10 Highland, I direct you not to answer.</p> <p>11 A. I -- I reviewed documents yesterday</p> <p>12 with counsel here. I believe that is the first</p> <p>13 time I have ever seen those.</p> <p>14 Q. Okay. Did you ever discuss with</p> <p>15 Mr. Seery these two lawsuits before or after</p> <p>16 they were filed?</p> <p>17 A. I don't recall.</p> <p>18 Q. Were you ever interviewed by legal</p> <p>19 counsel, to your knowledge, about these</p> <p>20 promissory notes before the complaints were</p> <p>21 filed? Without going into what was said, were</p> <p>22 you ever interviewed by legal counsel?</p> <p>23 MR. MORRIS: Objection to the form</p> <p>24 of the question.</p> <p>25 A. I don't recall.</p>	<p>Page 323</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Obviously with COVID, it changed,</p> <p>3 but -- but before COVID, did you used to meet</p> <p>4 with Mr. Seery from time to time in-person?</p> <p>5 A. Yeah, I mean, so before COVID -- so</p> <p>6 we're talking kind of late March, early April,</p> <p>7 right, there was about -- I don't remember the</p> <p>8 specific date when the board for Highland was</p> <p>9 appointed. I believe it was around February of</p> <p>10 2020, so maybe there was a month-and-a-half,</p> <p>11 two-month window where we were meeting</p> <p>12 in-person or, you know, like we were actually</p> <p>13 in the office, excuse me, we were in the</p> <p>14 office.</p> <p>15 And, you know, when they were first</p> <p>16 appointed, the board members and Mr. Seery</p> <p>17 were -- were definitely down here more</p> <p>18 in-person.</p> <p>19 Q. Did you ever see Mr. Seery taking</p> <p>20 written notes of -- of his meetings with you or</p> <p>21 others?</p> <p>22 A. I don't recall.</p> <p>23 Q. Do you recall on any Zoom or video</p> <p>24 conference with Mr. Seery, seeing him take</p> <p>25 notes, written notes?</p>
<p>Page 324</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. The Zoom calls we had, I don't</p> <p>3 recall having seen video or, you know, or if it</p> <p>4 was on Zoom, I just remember it being -- well,</p> <p>5 no, you know what, there were some -- you know,</p> <p>6 I take that back.</p> <p>7 So there were -- there were some</p> <p>8 times that I did remember seeing Mr. Seery</p> <p>9 on -- on some of the Zoom calls.</p> <p>10 Q. Well, let me --</p> <p>11 A. I don't -- sorry, I'm thinking. I'm</p> <p>12 thinking -- I'm going back. I'm trying to</p> <p>13 process this.</p> <p>14 Q. I can make it much quicker,</p> <p>15 Mr. Waterhouse. I have heard -- I have heard</p> <p>16 that Mr. Seery is a copious note taker.</p> <p>17 Do you have any knowledge about</p> <p>18 that?</p> <p>19 A. No.</p> <p>20 Q. Okay. Switching gears yet again,</p> <p>21 and this will be last theme. Do you need a</p> <p>22 restroom break, or are you good to go for</p> <p>23 another half an hour?</p> <p>24 MS. DEITSCH-PEREZ: I need a</p> <p>25 restroom break.</p>	<p>Page 325</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MR. RUKAVINA: Can we make it five</p> <p>3 minutes?</p> <p>4 THE WITNESS: Five minutes would be</p> <p>5 great.</p> <p>6 VIDEOGRAPHER: We're going off the</p> <p>7 record at 5:53 p.m.</p> <p>8 (Recess taken 5:53 p.m. to 5:59 p.m.)</p> <p>9 VIDEOGRAPHER: We are back on the</p> <p>10 record at 5:59 p.m.</p> <p>11 Q. Mr. Waterhouse, I had asked you</p> <p>12 earlier about contracts between HCMFA and the</p> <p>13 debtor, and now I'm going to talk about</p> <p>14 contracts between the debtor and NexPoint</p> <p>15 Advisors. Okay?</p> <p>16 A. Okay.</p> <p>17 Q. Now, were there contracts similar to</p> <p>18 the ones with HCMFA that NexPoint had in the</p> <p>19 nature of employee reimbursement and shared</p> <p>20 services?</p> <p>21 A. Yes, they -- NexPoint Advisors and</p> <p>22 Highland Capital Management Fund Advisors had</p> <p>23 cost reimbursement and shared services</p> <p>24 agreements with Highland Capital Management,</p> <p>25 L.P.</p>

<p>Page 326</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And was that shared services</p> <p>3 agreement, to the best of your understanding,</p> <p>4 in place as of December 31, 2020?</p> <p>5 A. It was -- it was terminated at some</p> <p>6 point, and I remember the contracts had</p> <p>7 different termination dates, but I think the --</p> <p>8 the date of termination was January 31st of</p> <p>9 2021, after the termination was put in.</p> <p>10 So yeah, it would be in place at the</p> <p>11 end of the year of December -- it would be in</p> <p>12 place at December 31st, 2020.</p> <p>13 Q. And pursuant to that agreement as of</p> <p>14 December 31st, 2020, was the debtor providing</p> <p>15 what you would describe as back office services</p> <p>16 to NexPoint?</p> <p>17 A. Yes.</p> <p>18 Q. Would those have included accounting</p> <p>19 services?</p> <p>20 A. Yes.</p> <p>21 Q. And as part of those accounting</p> <p>22 services, would the debtor have assisted</p> <p>23 NexPoint with paying its bills?</p> <p>24 MR. MORRIS: Objection to the form</p> <p>25 of the question.</p>	<p>Page 327</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. So let's break that up. You were a</p> <p>4 treasurer of NexPoint as well in December of</p> <p>5 2020?</p> <p>6 MR. MORRIS: Objection to the form</p> <p>7 of the question.</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And in December of 2020, did</p> <p>10 NexPoint have its own bank accounts?</p> <p>11 A. Yes.</p> <p>12 Q. And did it use those bank accounts</p> <p>13 to pay various of its obligations?</p> <p>14 A. Yes.</p> <p>15 Q. Did employees of the debtor have the</p> <p>16 ability to cause transfers to be made from</p> <p>17 those bank accounts on behalf of NexPoint?</p> <p>18 A. Yes.</p> <p>19 Q. And is that one of services that the</p> <p>20 debtor provided NexPoint, basically ensuring</p> <p>21 that accounts payable and other obligations</p> <p>22 would be paid?</p> <p>23 A. Yes.</p> <p>24 MR. MORRIS: Objection to the form</p> <p>25 of the question.</p>
<p>Page 328</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. You answered yes?</p> <p>3 A. Yes.</p> <p>4 Q. And the payments, though, whose</p> <p>5 funds would they be made from?</p> <p>6 A. From the bank account of NexPoint</p> <p>7 Advisors. If they were NexPoint advisor</p> <p>8 obligations, it would be made from NexPoint</p> <p>9 Advisors' bank account.</p> <p>10 Q. So let's pull up Exhibit Alpha 1.</p> <p>11 You should have that -- it is my Tab 1 or my</p> <p>12 Exhibit 1.</p> <p>13 (Exhibit A1 marked.)</p> <p>14 Q. So this is a -- this is a series of</p> <p>15 emails, Mr. Waterhouse. Let's look at the</p> <p>16 first page here, November 25, 2020, between</p> <p>17 Kristin Hendrix and yourself.</p> <p>18 Do you see that, sir?</p> <p>19 A. I do.</p> <p>20 Q. And do you see where Ms. Hendrix</p> <p>21 writes: NPA.</p> <p>22 Do you know what NPA stood for?</p> <p>23 A. Yes.</p> <p>24 Q. And what does it stand for?</p> <p>25 A. NexPoint Advisors.</p>	<p>Page 329</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And was that how you-all internally</p> <p>3 at Highland refer to NexPoint Advisors, L.P.?</p> <p>4 A. I mean, yes, amongst other things.</p> <p>5 Q. And she writes at the bottom of her</p> <p>6 email: Okay to release?</p> <p>7 Do you see that?</p> <p>8 A. Yes, I do.</p> <p>9 Q. So what --</p> <p>10 MR. MORRIS: Hold on one second.</p> <p>11 Okay. Go ahead.</p> <p>12 MR. RUKAVINA: Yeah.</p> <p>13 Q. So what is -- what is Ms. Hendrix</p> <p>14 here on November 25 asking of you?</p> <p>15 A. She is asking me -- so she -- these</p> <p>16 are -- these are payments -- typically we would</p> <p>17 do an accounts payable run every week at the</p> <p>18 end of every Friday. But looking at this date,</p> <p>19 it is Wednesday, November 25th, which means, to</p> <p>20 me, it is likely Thanksgiving weekend.</p> <p>21 So this is the day before</p> <p>22 Thanksgiving, so this is the last kind of --</p> <p>23 kind of day before the holidays and vacation</p> <p>24 and things of that nature. So it is</p> <p>25 effectively the Friday of that week.</p>

<p>Page 330</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 So she is -- she is putting in all</p> <p>3 the payments for the week because we batch</p> <p>4 payments weekly. And these are the payments</p> <p>5 that go out that week, and she is informing me</p> <p>6 of the payments and -- you know, again, at the</p> <p>7 bottom of the email, she is asking for my okay</p> <p>8 to -- to release these payments in the wire</p> <p>9 system.</p> <p>10 Q. So these would be accounts payable</p> <p>11 of NexPoint?</p> <p>12 A. I mean, it would be accounts payable</p> <p>13 for all of these entities listed on this email.</p> <p>14 Q. And who was Ms. Hendrix employed by</p> <p>15 in November and December of 2020?</p> <p>16 A. Highland Capital Management.</p> <p>17 Q. Okay. So -- so part of the services</p> <p>18 that NexPoint had contracted with was for</p> <p>19 Highland to ensure that NexPoint timely paid</p> <p>20 its accounts payable; is that accurate?</p> <p>21 MR. MORRIS: Objection to the form</p> <p>22 of the question. You have got to be</p> <p>23 kidding me.</p> <p>24 Q. Is that accurate?</p> <p>25 A. Yes.</p>	<p>Page 331</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And did NexPoint rely on employees</p> <p>3 of the debtor to ensure that NexPoint's</p> <p>4 accounts payable were timely paid?</p> <p>5 MR. MORRIS: Objection to the form</p> <p>6 of the question.</p> <p>7 A. Yes.</p> <p>8 MR. RUKAVINA: Let's flip to the</p> <p>9 next page, Mr. Nguyen, if you will please</p> <p>10 scroll to the next page.</p> <p>11 Q. So this is an email similar to the</p> <p>12 prior one, November 30th.</p> <p>13 Do you see where it says, NPA HCMFA,</p> <p>14 USD \$325,000 one-day loan?</p> <p>15 Do you see that, sir?</p> <p>16 A. I do.</p> <p>17 Q. Do you have any memory of what that</p> <p>18 was?</p> <p>19 A. I don't recall what that -- what</p> <p>20 that payment was for.</p> <p>21 Q. Did it sometimes occur that one</p> <p>22 advisor would, on very short-terms, make loans</p> <p>23 to another advisor?</p> <p>24 A. Yes. This -- this -- this occurred</p> <p>25 from -- from -- from time to time. It actually</p>
<p>Page 332</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 looking at -- I'm -- I'm looking at the date of</p> <p>3 this email. It is November 30th. It is the</p> <p>4 last day of the month.</p> <p>5 HCMFA has obligations it needs to</p> <p>6 pay to its broker-dealer, which is HCFD. And</p> <p>7 it likely was short funds to make those</p> <p>8 obligations under that -- under its agreement,</p> <p>9 and so it provided a one-day loan because on</p> <p>10 the next business day on 12/1 -- or the next</p> <p>11 business day in December, it would receive</p> <p>12 management fees from the underlying funds that</p> <p>13 it managed and it would be able to pay back</p> <p>14 that loan to NexPoint Advisors.</p> <p>15 Q. So -- so here Ms. Hendrix was</p> <p>16 seeking your approval to transfer \$325,000 from</p> <p>17 NexPoint to HCMFA for a one-day loan; is that</p> <p>18 correct?</p> <p>19 A. That is correct.</p> <p>20 Q. Let's flip to the next page, sir.</p> <p>21 MR. RUKAVINA: And, Mr. Nguyen, if</p> <p>22 you will please scroll down.</p> <p>23 Q. Now we have as an entry for</p> <p>24 \$325,000, 11/30 loan payment.</p> <p>25 Do you see that, sir?</p>	<p>Page 333</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. And that is probably the loan that</p> <p>4 was approved on the prior page?</p> <p>5 A. Yes, most likely.</p> <p>6 Q. So is it also true, sir, that in</p> <p>7 addition to accounts payable debtor employees</p> <p>8 would be assisting NexPoint with respect to</p> <p>9 paying back its debt?</p> <p>10 MR. MORRIS: Objection to the form</p> <p>11 of the question.</p> <p>12 A. I mean, yes, for loans of this</p> <p>13 nature, yes.</p> <p>14 Q. Well, what about long term loans?</p> <p>15 Was it reasonable for NexPoint to expect debtor</p> <p>16 employees to ensure that NexPoint timely paid</p> <p>17 its obligations under long-term notes?</p> <p>18 MR. MORRIS: Objection to the form</p> <p>19 of the question.</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 A. I mean, that is one of the things</p> <p>22 that the Highland personnel did provide to the</p> <p>23 advisors. Yes, we would -- we would -- over</p> <p>24 the years, yes, we -- we -- we -- we did do</p> <p>25 that generally. Again, I don't remember</p>

<p>Page 334</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 specifically but, yes, generally we -- you</p> <p>3 know, we did do that.</p> <p>4 Q. So do you recall -- and we can pull</p> <p>5 it up, if need be -- that under the NexPoint</p> <p>6 note that Mr. Morris asked you about earlier,</p> <p>7 the one for more than \$30 million, that</p> <p>8 NexPoint was obligated to make an annual</p> <p>9 payment of principal and interest?</p> <p>10 MR. MORRIS: Objection to the form</p> <p>11 of the question.</p> <p>12 A. Yes, it was -- yes, it -- it was an</p> <p>13 amortizing note. It was -- you know, from what</p> <p>14 we reviewed earlier, it was payable by</p> <p>15 December 31st of each year. So -- but are --</p> <p>16 are you asking me --</p> <p>17 Q. I'm just asking you, sir, if you</p> <p>18 recall the note.</p> <p>19 A. Yes, the \$30 million note, yes, we</p> <p>20 reviewed it earlier, yes.</p> <p>21 Q. And do you recall Mr. Morris had you</p> <p>22 go through the fact that NexPoint had made</p> <p>23 payments in years prior to 2020 on that note?</p> <p>24 A. I do.</p> <p>25 Q. And do you believe that employees of</p>	<p>Page 335</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 the debtor would have played any role in</p> <p>3 NexPoint having made those prior payments?</p> <p>4 MR. MORRIS: Objection to the form</p> <p>5 of the question.</p> <p>6 A. Yes.</p> <p>7 Q. And what role in years prior to 2020</p> <p>8 would employees of the debtor have had with</p> <p>9 respect to NexPoint making that annual payment?</p> <p>10 A. We -- we -- we would have -- I keep</p> <p>11 saying "we." The team would have calculated</p> <p>12 any amounts due under that loan and other</p> <p>13 loans, as -- as standard course.</p> <p>14 We would -- since we provided</p> <p>15 treasury services to the advisors, we would</p> <p>16 inform the -- the -- the -- we informed</p> <p>17 Mr. Dondero of any cash obligations that are</p> <p>18 forthcoming, whether we do cash projections.</p> <p>19 If, you know, any of these payments</p> <p>20 would have -- or, you know, the sum total of</p> <p>21 all of these payments, including any note</p> <p>22 payments, if there were any cash shortfalls, we</p> <p>23 would have informed Mr. Dondero of any cash</p> <p>24 shortfalls. We could adequately plan, you</p> <p>25 know, in instances like that.</p>
<p>Page 336</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Or, sorry, we -- I say "we" -- I</p> <p>3 keep saying "we" -- I keep wearing my -- again,</p> <p>4 my -- my treasurer hat.</p> <p>5 But, yes, it is to -- it is to</p> <p>6 inform Mr. Dondero of the obligations of the</p> <p>7 advisors in terms of cash and obligations that</p> <p>8 are -- are upcoming and that -- and that are --</p> <p>9 are scheduled to be paid.</p> <p>10 Q. And would those obligations that are</p> <p>11 upcoming and scheduled to be paid prior to 2020</p> <p>12 have incurred the annual payment on that</p> <p>13 NexPoint \$30 million note?</p> <p>14 MS. DANDENEAU: Objection to form.</p> <p>15 MS. DEITSCH-PEREZ: Davor, I think</p> <p>16 you misspoke. You might want to just</p> <p>17 repeat the question.</p> <p>18 Q. Okay. Let me repeat the question,</p> <p>19 sir.</p> <p>20 Prior to 2020, those services that</p> <p>21 you just described, would that -- on behalf of</p> <p>22 the debtor, would that have included NexPoint's</p> <p>23 payments on the \$30 million note?</p> <p>24 A. Yes.</p> <p>25 Q. So someone at the debtor in treasury</p>	<p>Page 337</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 or accounting would have sent some schedule or</p> <p>3 a reminder that a payment would be coming due</p> <p>4 in the future. Is that generally the practice?</p> <p>5 A. Yes, we would -- you know, again, I</p> <p>6 didn't -- I didn't micromanage the teams, but</p> <p>7 we had a -- a corporate accounting calendar</p> <p>8 that we use as kind of a tickler file to keep</p> <p>9 track of payments.</p> <p>10 I actually, you know, don't know how</p> <p>11 actively they're using that in -- in prior to</p> <p>12 2020, but it was actively used at some point.</p> <p>13 We did look at NexPoint cash</p> <p>14 periodically and cash for the other advisors as</p> <p>15 well and payments. You know, we -- payments</p> <p>16 like this would have appeared in our cash</p> <p>17 projections, in the advisor's cash projections.</p> <p>18 And, again, as like I said earlier,</p> <p>19 they would have appeared there, so there would</p> <p>20 be time to plan for making any of these</p> <p>21 payments.</p> <p>22 Q. And based on your experience, would</p> <p>23 it have been reasonable for NexPoint to rely on</p> <p>24 the debtors' employees to inform NexPoint of an</p> <p>25 upcoming payment due on the \$30 million</p>

<p>Page 338</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 promissory note?</p> <p>3 MR. MORRIS: Objection to form of</p> <p>4 the question.</p> <p>5 MS. DANDENEAU: Objection to form.</p> <p>6 A. Yes. Yes, they did. I mean, but I</p> <p>7 mean, but I don't think these -- these notes</p> <p>8 were any secret to anybody.</p> <p>9 Q. I understand, and I'm not suggesting</p> <p>10 otherwise.</p> <p>11 MR. RUKAVINA: Please pull up Alpha</p> <p>12 2, Mr. Nguyen.</p> <p>13 (Exhibit A2 marked.)</p> <p>14 Q. Now, this document is similar to the</p> <p>15 ones we've seen before as of December 31, 2020,</p> <p>16 and I don't see under NTA anything there for</p> <p>17 paying the promissory note to Highland.</p> <p>18 Do you see anything like that?</p> <p>19 A. I do not.</p> <p>20 MR. RUKAVINA: You can pull that --</p> <p>21 that exhibit down, Mr. Nguyen.</p> <p>22 Q. You are aware, of course, by now</p> <p>23 that, in fact, NexPoint failed to make the</p> <p>24 payment due December 31, 2020, are you not?</p> <p>25 A. I am aware, and yes, I do understand</p>	<p>Page 339</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 it.</p> <p>3 Q. Were you aware that Highland</p> <p>4 accelerated that \$30 million promissory note?</p> <p>5 A. I am aware.</p> <p>6 Q. Were you aware of that acceleration</p> <p>7 at the time that it occurred?</p> <p>8 A. I don't remember specifically.</p> <p>9 Q. Do you recall whether anyone asked</p> <p>10 you -- prior to the acceleration, anyone asked</p> <p>11 you at Highland, what Highland should do with</p> <p>12 respect to the missed payment?</p> <p>13 A. Did anyone ask me what Highland</p> <p>14 should do about the missed payment?</p> <p>15 Q. Yes, before acceleration.</p> <p>16 MR. MORRIS: Objection to the form</p> <p>17 of the question.</p> <p>18 A. I mean, what -- what I recall is</p> <p>19 there was the -- sorry, are you asking me --</p> <p>20 MS. DANDENEAU: Why don't you just</p> <p>21 repeat the question, Mr. Rukavina.</p> <p>22 Q. Let me try again, Mr. Waterhouse,</p> <p>23 let me try again.</p> <p>24 I am saying you're the CFO of</p> <p>25 someone, in this case, Highland, and the</p>
<p>Page 340</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 borrower failed to make the required payment.</p> <p>3 Are you with me so far?</p> <p>4 A. I am.</p> <p>5 Q. Did anyone then ask you, what should</p> <p>6 we do with respect to our rights against the</p> <p>7 borrower that missed the payment?</p> <p>8 A. Not that I recall.</p> <p>9 Q. Did you play a role in the decision</p> <p>10 to accelerate that \$30 million promissory note?</p> <p>11 A. I did not.</p> <p>12 Q. Do you recall whether Mr. Seery ever</p> <p>13 asked you before the acceleration as to whether</p> <p>14 he should accelerate the note?</p> <p>15 A. I don't recall.</p> <p>16 Q. And you don't recall when you</p> <p>17 learned of the acceleration itself?</p> <p>18 MR. MORRIS: Objection to the form</p> <p>19 of that question.</p> <p>20 A. It was -- it was sometime in</p> <p>21 early -- in early 2021. I don't remember</p> <p>22 specifically.</p> <p>23 Q. But do you recall whether it was</p> <p>24 after the acceleration had already been</p> <p>25 transmitted?</p>	<p>Page 341</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MS. DANDENEAU: Objection to the</p> <p>3 form of the question.</p> <p>4 A. I don't recall.</p> <p>5 Q. Do you recall in early to mid</p> <p>6 January of 2021, after the default, discussing</p> <p>7 the default with Mr. Dondero?</p> <p>8 A. I do recall discussing with</p> <p>9 Mr. Dondero after December 31, 2020?</p> <p>10 Q. Yes, the fact of the default.</p> <p>11 A. I don't recall.</p> <p>12 MR. RUKAVINA: Let's pull up my</p> <p>13 Exhibit 6, Alpha 6.</p> <p>14 (Exhibit A6 marked.)</p> <p>15 MR. RUKAVINA: And, Mr. Nguyen, if</p> <p>16 you will please scroll down.</p> <p>17 Q. This email chain begins with you</p> <p>18 writing to Ms. Hendrix on January the 12th:</p> <p>19 NexPoint note to HCMLP.</p> <p>20 Do you see that, sir?</p> <p>21 A. I do.</p> <p>22 Q. Were you discussing this same</p> <p>23 \$30 million note we're talking about right now</p> <p>24 with Ms. Hendrix?</p> <p>25 A. Yes.</p>

<p>Page 342</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Do you recall what prompted</p> <p>3 you to send that email to her?</p> <p>4 A. Yes, I had -- I had a conversation</p> <p>5 with Jim.</p> <p>6 Q. Okay. And what -- what did you</p> <p>7 discuss with Jim that led to this email chain?</p> <p>8 A. He -- he called me and he said he</p> <p>9 wanted to make payment on the NexPoint note,</p> <p>10 and I didn't -- I didn't know the -- the amount</p> <p>11 offhand, so I reached out to Kristin and got</p> <p>12 the details and relayed that to him.</p> <p>13 Q. And you see you sent that email to</p> <p>14 her at 11:15 a.m. Does that help you remember</p> <p>15 when you had this discussion with Mr. Dondero?</p> <p>16 In other words, was it that morning or the day</p> <p>17 before, or can you -- can you --</p> <p>18 A. No, it was -- it was that morning.</p> <p>19 Q. And do you recall how you had that</p> <p>20 conversation with him?</p> <p>21 MR. MORRIS: Objection to the form</p> <p>22 of the question.</p> <p>23 Q. By telephone, by email, in-person?</p> <p>24 A. Yeah, he -- he called me. I was at</p> <p>25 home. We were working from home here in</p>	<p>Page 343</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 December of 2020. He called me from home. He</p> <p>3 said he was in court. He wanted to -- he asked</p> <p>4 about, you know, making payment on the note and</p> <p>5 the amount, and so I didn't have those numbers</p> <p>6 in front of me, so I said I would get back to</p> <p>7 him. I wanted all the details, so here is</p> <p>8 this -- so I reached out to Kristin.</p> <p>9 Q. And then she gave you that</p> <p>10 \$1,406,000 figure?</p> <p>11 MR. RUKAVINA: Mr. Nguyen, if you</p> <p>12 will scroll up, please.</p> <p>13 A. Yes. Yeah, she -- the \$1,406,112.</p> <p>14 Q. And do you recall whether you</p> <p>15 conveyed that amount to Mr. Dondero?</p> <p>16 A. Yes. I -- I called him back and</p> <p>17 gave him -- gave him this amount.</p> <p>18 Q. Are you aware of whether NexPoint,</p> <p>19 in fact, then made that 1 million 406 and</p> <p>20 change payment?</p> <p>21 A. Yes, they did.</p> <p>22 Q. Did you discuss with Mr. Dondero at</p> <p>23 that time, either the first conference or the</p> <p>24 second conference that day -- strike that.</p> <p>25 When you conveyed the number to</p>
<p>Page 344</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Mr. Dondero, was -- was it also on January</p> <p>3 12th?</p> <p>4 A. Sorry, when I conveyed the</p> <p>5 \$1.4 million number?</p> <p>6 Q. Yes.</p> <p>7 A. Yes, yes, it was that -- it was --</p> <p>8 Q. So you had --</p> <p>9 A. It was that point.</p> <p>10 Q. Well, to the best of your</p> <p>11 recollection, you had a conference with</p> <p>12 Mr. Dondero by the telephone in the morning,</p> <p>13 and then another conference with him by</p> <p>14 telephone after 11:40 a.m. that morning?</p> <p>15 A. Yeah, I can't remember -- yeah, it</p> <p>16 was either that morning or it could have been,</p> <p>17 you know, early afternoon, but again, I</p> <p>18 remember calling him back, relaying this</p> <p>19 information to him, and he said, okay, pay --</p> <p>20 you know, make -- make this payment.</p> <p>21 Q. And during either of those two</p> <p>22 calls, did you tell Mr. Dondero anything to the</p> <p>23 effect that making those -- I'm sorry, making</p> <p>24 that payment would not de-accelerate the</p> <p>25 promissory note?</p>	<p>Page 345</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. No.</p> <p>3 Q. Did you tell him anything to the</p> <p>4 effect that making that payment would not cure</p> <p>5 the default?</p> <p>6 A. No.</p> <p>7 Q. Did you discuss that in any way with</p> <p>8 him?</p> <p>9 A. No, I did not.</p> <p>10 Q. Did he say why he wanted to have</p> <p>11 that \$1.4 million payment made?</p> <p>12 MR. MORRIS: Objection to the form</p> <p>13 of the question.</p> <p>14 A. He -- he -- he didn't go into</p> <p>15 specifics.</p> <p>16 Q. Did he say anything to you to the</p> <p>17 effect that if NexPoint makes that payment,</p> <p>18 then the note will be de-accelerated?</p> <p>19 MR. MORRIS: Objection to the form</p> <p>20 of the question.</p> <p>21 A. I don't recall.</p> <p>22 MR. RUKAVINA: You can put this one</p> <p>23 down, Mr. Nguyen.</p> <p>24 Q. And, again, when you say you don't</p> <p>25 recall, you mean you don't remember right now</p>

<p>Page 346</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 either way; correct?</p> <p>3 A. Yeah, I don't remember. I don't</p> <p>4 remember us discussing that.</p> <p>5 Q. Now -- and we're almost done, I</p> <p>6 promise. I'm just going to -- I don't know how</p> <p>7 to ask this question, so I'm just going to try</p> <p>8 to do my best.</p> <p>9 Prior to the default on December 31,</p> <p>10 2020, did Mr. Seery ever tell you any words to</p> <p>11 the effect that you or someone at Highland</p> <p>12 should ensure that NexPoint doesn't make its</p> <p>13 payment?</p> <p>14 A. No.</p> <p>15 Q. Did you have any hint or any belief</p> <p>16 that anyone at NexPoint -- I'm sorry, strike</p> <p>17 that.</p> <p>18 Did you have any reason to believe</p> <p>19 that anyone with Highland was actively trying</p> <p>20 to get NexPoint to make that default by not</p> <p>21 paying on December 31?</p> <p>22 MR. MORRIS: Objection to the form</p> <p>23 of the question.</p> <p>24 A. Are you asking, did any Highland</p> <p>25 employees actively work to make -- to</p>	<p>Page 347</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 somehow --</p> <p>3 Q. Yes. Let me take a step back. Let</p> <p>4 me take a step back.</p> <p>5 So you are aware now that as a</p> <p>6 result of that default, what was still some</p> <p>7 25-year note was accelerated and became</p> <p>8 immediately due. You are aware of that now;</p> <p>9 right?</p> <p>10 A. Yes.</p> <p>11 Q. And can you see how someone at</p> <p>12 Highland might actually have been pleased with</p> <p>13 that development?</p> <p>14 MR. MORRIS: Objection to the form.</p> <p>15 Q. Not that they were -- not that they</p> <p>16 were pleased, but you can see how someone at</p> <p>17 Highland might have been pleased with that</p> <p>18 development?</p> <p>19 MR. MORRIS: Objection to the form</p> <p>20 of the question.</p> <p>21 MS. DANDENEAU: Object to form.</p> <p>22 A. I don't know how they would have</p> <p>23 reacted to that.</p> <p>24 Q. Okay. But you're not -- you're not</p> <p>25 aware of any instructions or any actions being</p>
<p>Page 348</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 given or taken at Highland by Mr. Seery, the</p> <p>3 independent board, DSI, that -- that would have</p> <p>4 basically led Highland to ensure that NexPoint</p> <p>5 would fail to make that payment?</p> <p>6 A. I'm not aware.</p> <p>7 Q. In other words, there wasn't a trick</p> <p>8 or a settlement; right?</p> <p>9 MS. DEITSCH-PEREZ: Objection to</p> <p>10 form.</p> <p>11 MS. DANDENEAU: Object to form.</p> <p>12 MR. MORRIS: Object to form.</p> <p>13 A. I'm not aware.</p> <p>14 Look, I'm not aware. I'm not in</p> <p>15 every conversation. I mean, and I'm just --</p> <p>16 again, I'm sitting at home. It is the end of</p> <p>17 the year. Again, I'm not aware.</p> <p>18 Q. That is a perfectly legitimate</p> <p>19 answer. I don't know why -- why you think</p> <p>20 otherwise.</p> <p>21 Okay. Just give me one second to</p> <p>22 compose my thoughts.</p> <p>23 MS. DEITSCH-PEREZ: While you're</p> <p>24 taking your one second, why don't we take</p> <p>25 three minutes. I will be right back.</p>	<p>Page 349</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 VIDEOGRAPHER: Do we want to go off</p> <p>3 the record?</p> <p>4 MR. RUKAVINA: Yes.</p> <p>5 VIDEOGRAPHER: All right. We're</p> <p>6 going off the record at 6:27 p.m.</p> <p>7 (Recess taken 6:27 p.m. to 6:30 p.m.)</p> <p>8 VIDEOGRAPHER: We are back on the</p> <p>9 record at 6:30 p.m.</p> <p>10 MR. HORN: Is Deb back?</p> <p>11 MS. DANDENEAU: Are you asking about</p> <p>12 me? I'm here.</p> <p>13 MR. HORN: Oh, okay. I don't see</p> <p>14 you, sorry.</p> <p>15 Q. Actually, yeah, Mr. Waterhouse, so</p> <p>16 when you had --</p> <p>17 MS. DANDENEAU: Are you asking about</p> <p>18 Deb Dandeneau or Deborah? I mean, there</p> <p>19 are a lot -- as we talked about, a lot of</p> <p>20 Debs. I'm here.</p> <p>21 MS. DEITSCH-PEREZ: I'm here.</p> <p>22 MR. HORN: Yes, I was asking about</p> <p>23 DDP.</p> <p>24 MS. DEITSCH-PEREZ: Oh, DDP is here.</p> <p>25 MR. HORN: Okay. Here we go. I'm</p>

<p>Page 350</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 going back on mute.</p> <p>3 MS. DANDENEAU: Get the right</p> <p>4 nomenclature.</p> <p>5 Q. Mr. Waterhouse, on January 12th,</p> <p>6 2021, when you had those talks with Mr. Dondero</p> <p>7 about the \$1.4 million payment, did you have a</p> <p>8 communication or a conversation with Mr. Seery</p> <p>9 about that payment after January 12th, 2021?</p> <p>10 A. I don't recall.</p> <p>11 Q. Well, in response to Mr. Dondero</p> <p>12 reaching out to you, do you recall on that day,</p> <p>13 January 12th, talking to Mr. Seery or anyone at</p> <p>14 Highland other than the email chain we just saw</p> <p>15 about Mr. Dondero's call with you?</p> <p>16 A. Did I talk to -- I spoke with</p> <p>17 Kristin -- I don't know if I spoke to her. I</p> <p>18 likely spoke to Kristin Hendrix because we had</p> <p>19 to get the wire on NexPoint's behalf to make</p> <p>20 the payment to Highland.</p> <p>21 Q. So it is true, then, that -- that</p> <p>22 employees of the debtor did actually cause that</p> <p>23 payment to be made when it was made after</p> <p>24 January 12th?</p> <p>25 A. Yes, I mean, we -- we -- as I</p>	<p>Page 351</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 testified earlier, we provided that accounting</p> <p>3 finance treasury function as -- under the</p> <p>4 shared services agreement. And so once I</p> <p>5 got the -- I talked to Jim, got the approval to</p> <p>6 make this payment, we have to then make the</p> <p>7 payment, or the team does, and so the payment</p> <p>8 was made.</p> <p>9 Q. Okay. But -- okay. And -- and</p> <p>10 sitting here right now, after Jim called you,</p> <p>11 you don't remember talking to anyone other than</p> <p>12 the -- the couple of people you mentioned,</p> <p>13 talking to anyone about something to the effect</p> <p>14 that, hey, Jim wants to make this payment now?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 A. I don't -- I don't recall.</p> <p>18 Q. And does that include legal counsel?</p> <p>19 Without going into any detail, on</p> <p>20 January 12th or before that payment was made,</p> <p>21 did you consult with legal counsel about</p> <p>22 anything having to do with the \$1.4 million</p> <p>23 payment?</p> <p>24 A. I don't recall.</p> <p>25 Q. Okay. Thank you, sir, for your</p>
<p>Page 352</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 time.</p> <p>3 MR. RUKAVINA: Pass the witness.</p> <p>4 MR. MORRIS: I just have a few</p> <p>5 questions, if I may.</p> <p>6 MS. DEITSCH-PEREZ: Don't you go at</p> <p>7 the end?</p> <p>8 MR. MORRIS: Oh, I apologize. He is</p> <p>9 your witness. I'm surprised you want to</p> <p>10 ask him questions, but go right ahead.</p> <p>11 MS. DEITSCH-PEREZ: Just have a</p> <p>12 couple of things.</p> <p>13 MR. RUKAVINA: And I will just</p> <p>14 object to that, that he's our witness.</p> <p>15 That's not --</p> <p>16 MR. MORRIS: I'm not talking to you.</p> <p>17 I'm not talking to you.</p> <p>18 MS. DANDENEAU: Also, Mr. Morris, it</p> <p>19 is -- it is --</p> <p>20 MS. DEITSCH-PEREZ: He is not my</p> <p>21 witness. He's been subpoenaed by you.</p> <p>22 Okay?</p> <p>23 That is no offense, Mr. Waterhouse,</p> <p>24 I'm -- I'm not -- okay. Anyway.</p> <p>25 EXAMINATION</p>	<p>Page 353</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 BY MS. DEITSCH-PEREZ:</p> <p>3 Q. Good evening. I'm very sorry to be</p> <p>4 going last and I know you have had a long and</p> <p>5 taxing day, so I thank you for indulging me.</p> <p>6 The kinds of services that you</p> <p>7 describe that the -- that Highland provided for</p> <p>8 NexPoint, did Highland also provide similar</p> <p>9 services to that to HCRE and HCMS?</p> <p>10 A. Yes.</p> <p>11 MR. MORRIS: Objection to the form</p> <p>12 of the question.</p> <p>13 Q. What kind of services did Highland</p> <p>14 provide to HCRE and HCMS?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 MS. DEITSCH-PEREZ: What is your</p> <p>18 objection, John?</p> <p>19 MR. MORRIS: It is vague and</p> <p>20 ambiguous. Unlike the advisors and</p> <p>21 NexPoint, they actually had shared services</p> <p>22 agreements.</p> <p>23 MS. DEITSCH-PEREZ: I got -- I</p> <p>24 understand your objection. That is fine.</p> <p>25 Q. Let's take them one at a time.</p>

<p>Page 354</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 What kinds of services did Highland</p> <p>3 provide to HCRE?</p> <p>4 MR. MORRIS: Objection to the form</p> <p>5 of the question.</p> <p>6 A. HCMS, Highland employees provided</p> <p>7 accounting services, treasury management</p> <p>8 services, potentially legal services. I</p> <p>9 don't -- but I wouldn't have been directly</p> <p>10 involved in that. But as far as the teams that</p> <p>11 I manage, it was accounting, treasury, things</p> <p>12 of that nature.</p> <p>13 Q. Okay. And that was for HCM, LLP --</p> <p>14 A. And -- and, sorry, it would also be</p> <p>15 any asset valuation if needed as well.</p> <p>16 Q. Okay. We went back and forth on</p> <p>17 each other and I apologize, so just to clarify.</p> <p>18 You were talking about the services</p> <p>19 that Highland Capital Management provided to</p> <p>20 HCMS; is that right?</p> <p>21 A. HCMS. So, again, yes. And</p> <p>22 accounting, treasury, valuation, and also tax</p> <p>23 services too.</p> <p>24 Q. Okay.</p> <p>25 A. Tax services. Look, I'm expanding</p>	<p>Page 355</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 this, their HR services as well.</p> <p>3 Q. Okay. And did that include bill</p> <p>4 paying?</p> <p>5 MR. MORRIS: Objection to the form</p> <p>6 of the question.</p> <p>7 Q. Did the services that HCM provided</p> <p>8 to HCMS include bill paying?</p> <p>9 MR. MORRIS: Objection to the form</p> <p>10 of the question.</p> <p>11 A. Yes.</p> <p>12 Q. And did the services that HCMLP</p> <p>13 provided to HCMS include scheduling upcoming</p> <p>14 bills?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 A. Yes.</p> <p>18 Q. And did HCMLP regularly pay -- cause</p> <p>19 to be paid the payments on loans HCMS had from</p> <p>20 HCMLP?</p> <p>21 MR. MORRIS: Objection to the form</p> <p>22 of the question.</p> <p>23 A. Yes.</p> <p>24 Q. Typically -- if there is a</p> <p>25 typically, how far in advance of due dates did</p>
<p>Page 356</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 HCMLP cause HCMS to pay its bills?</p> <p>3 MR. MORRIS: Objection to the form</p> <p>4 of the question.</p> <p>5 A. I mean, it -- it -- it depend -- it</p> <p>6 depended on the nature of the payment and the</p> <p>7 vendor, but, you know, if there were -- if</p> <p>8 there were larger scheduled payments, you know,</p> <p>9 I would like to give at least 30 days notice.</p> <p>10 And that is -- that is kind of my</p> <p>11 rule of thumb so no one is surprised.</p> <p>12 Q. Okay. And was it generally HCMLP's</p> <p>13 practice to timely pay HCMS' bills?</p> <p>14 MR. MORRIS: Objection to the form</p> <p>15 of the question.</p> <p>16 A. It -- it -- it -- that depended on</p> <p>17 the nature of the payment.</p> <p>18 Q. Okay. And can you explain what you</p> <p>19 mean by that?</p> <p>20 A. Yeah, I mean if -- if it was -- I</p> <p>21 mean -- if there was some professional fees</p> <p>22 that weren't -- you know, they were due but</p> <p>23 they weren't urgent, those fees may not be paid</p> <p>24 as timely as others that have a due date or --</p> <p>25 or things like that.</p>	<p>Page 357</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Are loan payments the kinds</p> <p>3 of thing that HCMLP would pay on time because</p> <p>4 of potential consequences of not paying on</p> <p>5 time?</p> <p>6 MR. MORRIS: Objection to the form</p> <p>7 of the question.</p> <p>8 A. Yes. As I testified earlier, we</p> <p>9 would want to give, you know, notice on -- on</p> <p>10 -- on larger payments and -- and things of that</p> <p>11 nature so we didn't miss due dates.</p> <p>12 Q. Okay. And over the course of time,</p> <p>13 did HCMLP generally pay HCMS' loan payments in</p> <p>14 a timely fashion?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 A. I can't remember specifically, but</p> <p>18 generally, yes.</p> <p>19 Q. Okay. Now, did HCMLP provide</p> <p>20 similar services to HCRE that you have</p> <p>21 described it provided to HCMS?</p> <p>22 MR. MORRIS: Objection to the form</p> <p>23 of the question.</p> <p>24 A. Yes, but I don't think it -- it</p> <p>25 provided -- I don't think it provided HR</p>

<p>1 WATERHOUSE - 10-19-21</p> <p>2 services.</p> <p>3 Q. Can you describe the accounting and</p> <p>4 treasury services that HCMLP provided for HCRE?</p> <p>5 A. Yeah, it -- it would provide</p> <p>6 bookkeeping services on a -- on a periodic</p> <p>7 basis. It would make payments, you know, as</p> <p>8 needed.</p> <p>9 Q. Okay. So did it provide --</p> <p>10 A. And -- and I believe it -- it -- it</p> <p>11 provided tax services as well.</p> <p>12 Q. Okay. And so did it provide the</p> <p>13 same kind of bill -- did HCMLP provide the same</p> <p>14 kind of bill-paying services for HCRE that it</p> <p>15 provided for HCMS and NexPoint?</p> <p>16 MR. MORRIS: Objection to the form</p> <p>17 of the question.</p> <p>18 A. Yes.</p> <p>19 Q. And over the course of time, did</p> <p>20 HCMLP generally cause to be made the loan</p> <p>21 payments that HCRE owed to HCMLP?</p> <p>22 MR. MORRIS: Objection to the form</p> <p>23 of the question.</p> <p>24 A. Yes.</p> <p>25 Q. Did HCMLP make loan payment -- the</p>	<p>1 WATERHOUSE - 10-19-21</p> <p>2 loan payment that was due from HCMS to HCMLP in</p> <p>3 December of 2020?</p> <p>4 MR. MORRIS: Objection to the form</p> <p>5 of the question.</p> <p>6 A. I don't believe that payment --</p> <p>7 payment was made.</p> <p>8 Q. Okay. And when HCMLP caused HCMS in</p> <p>9 the past to make loan payments, whose money did</p> <p>10 it use to make those payments?</p> <p>11 MR. MORRIS: Objection to the form</p> <p>12 of the question.</p> <p>13 A. It was the -- the money in HCMS's</p> <p>14 operating account would be made to that --</p> <p>15 those moneys would be used to make payment to</p> <p>16 Highland Capital Management.</p> <p>17 Q. Okay. And Highland -- is it correct</p> <p>18 that Highland Capital Management personnel had</p> <p>19 the access to HCMS's accounts to be able to</p> <p>20 cause such payments to be made?</p> <p>21 A. Yes, Highland personnel had access</p> <p>22 to those accounts.</p> <p>23 Q. Okay. And so now for HCRE, whose</p> <p>24 money was used when HCMLP caused HCRE</p> <p>25 payments -- loan payments to Highland to be</p>
<p>1 WATERHOUSE - 10-19-21</p> <p>2 made?</p> <p>3 MR. MORRIS: Objection to the form</p> <p>4 of the question.</p> <p>5 A. It was -- it was cash in HCRE's bank</p> <p>6 account that would be used to make payments to</p> <p>7 Highland Capital Management.</p> <p>8 Q. Okay. And so did Highland Capital</p> <p>9 Management have access to HCRE's funds in order</p> <p>10 to be able to make such payments?</p> <p>11 MR. MORRIS: Objection to the form</p> <p>12 of the question.</p> <p>13 A. Personnel at Highland Capital</p> <p>14 Management had access to HCRE's bank account to</p> <p>15 effectuate the payments.</p> <p>16 Q. Okay. And was the payment due from</p> <p>17 HCRE to HCMLP due in December of 2020 made?</p> <p>18 A. It --</p> <p>19 Q. In December of 2020.</p> <p>20 A. It was not.</p> <p>21 Q. Okay. And was there money in HCRE's</p> <p>22 account that would have enabled the payment to</p> <p>23 be made had HCM personnel attempted to make the</p> <p>24 payment?</p> <p>25 MR. MORRIS: Objection to the form</p>	<p>1 WATERHOUSE - 10-19-21</p> <p>2 of the question.</p> <p>3 A. I -- I don't recall.</p> <p>4 Q. Do you have any reason to believe</p> <p>5 that either HCRE or HCMS simply didn't have the</p> <p>6 funds on hand to make the December 2020</p> <p>7 payments?</p> <p>8 A. I don't know.</p> <p>9 Q. I guess I'm asking, do you have any</p> <p>10 reason to believe that they didn't have the</p> <p>11 funds?</p> <p>12 A. We managed cash for so many</p> <p>13 different entities and funds, and I don't</p> <p>14 recall, you know, where the cash position was</p> <p>15 for HCRE and HCMS at 12/31/2020.</p> <p>16 Q. Okay.</p> <p>17 A. I just don't recall, and I don't --</p> <p>18 and I don't remember what the loan payment</p> <p>19 obligations were from HCRE to Highland, and</p> <p>20 from HCMS to Highland. I don't recall. I</p> <p>21 don't recall, I mean...</p> <p>22 Q. Let me come at it a different way.</p> <p>23 Were the -- were the payments that would</p> <p>24 otherwise have been due in December of 2020</p> <p>25 made in January of 2021 for HCMS and HCRE?</p>

<p>Page 362</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I believe the HCRE payment was made</p> <p>3 in January of 2021. I don't recall any</p> <p>4 payments being made from HCMS to Highland.</p> <p>5 Q. If it -- how is it the HCRE payment</p> <p>6 came to be made? Why did you make it -- why</p> <p>7 did HCM make the payment in January of 2021?</p> <p>8 A. Jim -- Jim called me and instructed</p> <p>9 me to -- to make the payment on behalf of HCRE,</p> <p>10 Jim Dondero -- Jim Dondero.</p> <p>11 Q. Did he seem upset that -- that the</p> <p>12 payment had not been made?</p> <p>13 A. Yeah. On the note that was, you</p> <p>14 know, that was the term note, yes, he -- he was</p> <p>15 displeased that the -- that the payment had not</p> <p>16 been made by year-end.</p> <p>17 Q. Okay. And did you make the -- cause</p> <p>18 the payment to be made as -- as requested?</p> <p>19 A. Yes.</p> <p>20 Q. And did anyone else from HCM</p> <p>21 participate with you in causing the payment to</p> <p>22 be made to -- on the HCRE loan?</p> <p>23 A. Yes. It would have been Kristin</p> <p>24 Hendrix. I -- again, I don't -- as I testified</p> <p>25 earlier, I'm not an officer of HCRE. I don't</p>	<p>Page 363</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 believe I'm an authorized signer. So I</p> <p>3 can't -- other personnel have to make payment</p> <p>4 from HCRE to -- to -- to -- to Highland.</p> <p>5 Q. Okay. And in the conversation</p> <p>6 that -- that you had with Mr. Dondero when he</p> <p>7 requested the payment to be made, did you say</p> <p>8 to him words to the effect, Jim, this loan is</p> <p>9 going to stay in default, what are you making</p> <p>10 the payment for, anything like that?</p> <p>11 A. No.</p> <p>12 Q. In fact, did you have the impression</p> <p>13 from him that he thought that the loan would</p> <p>14 be -- the default would be cured by making the</p> <p>15 payment?</p> <p>16 MR. MORRIS: Objection to the form</p> <p>17 of the question.</p> <p>18 A. Did I get the impression from Jim</p> <p>19 Dondero that the loan would be cured if the</p> <p>20 payment from HCRE --</p> <p>21 Q. Yeah, if that is what he thought.</p> <p>22 MR. MORRIS: Objection to the form</p> <p>23 of the question.</p> <p>24 A. I didn't get any impression from him</p> <p>25 on that at the time.</p>
<p>Page 364</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Do you know whether there was an</p> <p>3 HCMS term loan that had a payment due in</p> <p>4 December of 2020?</p> <p>5 A. I don't recall.</p> <p>6 Q. Okay. And so the reason you don't</p> <p>7 recall whether or not there was a payment in</p> <p>8 January of 2021 is because you just don't</p> <p>9 remember whether there was such a loan at all?</p> <p>10 MR. MORRIS: Objection to the form</p> <p>11 of the question.</p> <p>12 A. I don't remember. There is -- there</p> <p>13 is so many notes, and I mean, demands, and I</p> <p>14 don't -- I don't remember. It's a lot to keep</p> <p>15 track in your head.</p> <p>16 Q. I understand, and -- and I hear your</p> <p>17 frustration when you have explained that the</p> <p>18 debtor has your documents and you don't, and so</p> <p>19 I fully appreciate it, and this is no knock on</p> <p>20 you. It's a knock on somebody else on this</p> <p>21 call.</p> <p>22 MR. MORRIS: I move to strike. That</p> <p>23 was pretty obnoxious, but go ahead.</p> <p>24 Q. Okay. But so, Mr. Waterhouse, if --</p> <p>25 if a payment on the HCMS loan was made in</p>	<p>Page 365</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 January of 2021, do you think it was part of</p> <p>3 the same conversation where Jim Dondero said,</p> <p>4 hey, why didn't that get paid, please make</p> <p>5 that -- get that payment done?</p> <p>6 MR. MORRIS: I object to the form of</p> <p>7 the question.</p> <p>8 A. Yes. Likely it would have been -- I</p> <p>9 mean, again, I don't recall a payment being</p> <p>10 made, but, you know, again, I don't remember</p> <p>11 everything.</p> <p>12 Q. Okay. Did -- at the time you were</p> <p>13 communicating with Kristin Hendrix about the</p> <p>14 payment being made, whichever payments were</p> <p>15 made in January, did she say anything to you</p> <p>16 about the payments not curing the loan</p> <p>17 defaults?</p> <p>18 A. No.</p> <p>19 Q. Okay. All right. So I'm going to</p> <p>20 take you back to very early in the deposition</p> <p>21 when Mr. Morris was asking you about the --</p> <p>22 the -- the -- the agreement with respect to</p> <p>23 the -- the forgiveness element of the loans, so</p> <p>24 that is just to orient you.</p> <p>25 Do you remember that there was a</p>

<p>Page 366</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 time that you and Mr. Dondero were</p> <p>3 communicating about potential means of</p> <p>4 resolving the Highland bankruptcy by what was</p> <p>5 colloquially referred to as a pot plan?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And can you tell me generally</p> <p>8 when that was?</p> <p>9 A. Like mid -- mid 2020, sometime in</p> <p>10 2020, mid 2020.</p> <p>11 Q. Okay. And did the process of trying</p> <p>12 to figure out what the numbers should be</p> <p>13 involve looking at what one should pay for the</p> <p>14 Highland assets?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And did there come a time</p> <p>19 when you were proposing some potential numbers</p> <p>20 and Mr. Dondero said something to you like,</p> <p>21 well, why are you including payment for the</p> <p>22 related party notes, those, you know, were</p> <p>23 likely to be forgiven as part of my deferred</p> <p>24 executive compensation?</p> <p>25 MR. MORRIS: Objection to the form</p>	<p>Page 367</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 of the question.</p> <p>3 A. Yes, we did have that conversation.</p> <p>4 Q. Okay. Was that conversation in</p> <p>5 connection with trying to figure out the right</p> <p>6 numbers for a pot plan?</p> <p>7 A. Yeah. I mean, it was -- it was -- I</p> <p>8 mean, Jim -- Jim would ask for, you know,</p> <p>9 most -- most recent asset values, you know, for</p> <p>10 Highland, and -- and myself and the team</p> <p>11 provided those to him, so it was in that</p> <p>12 context.</p> <p>13 Q. Okay. And does that refresh your</p> <p>14 recollection that these communications were in</p> <p>15 2020 rather than 2021?</p> <p>16 MR. MORRIS: Objection to the form</p> <p>17 of the question.</p> <p>18 A. The -- the -- the executive</p> <p>19 compensation discussions were definitely in</p> <p>20 2020.</p> <p>21 Q. Okay. Now, did you ever make</p> <p>22 proposals that took into account Jim's comment</p> <p>23 that the notes were likely to end up forgiven</p> <p>24 as part of his compensation?</p> <p>25 MR. MORRIS: Objection to the form</p>
<p>Page 368</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 of the question.</p> <p>3 A. Yes, we -- the team and myself put</p> <p>4 together, you know, asset summaries of Highland</p> <p>5 at various times for all the assets of</p> <p>6 Highland, and not including the notes.</p> <p>7 Q. Okay. And were those presentations</p> <p>8 communicated to -- to Mr. Seery?</p> <p>9 A. No. Well, look, I didn't tell -- I</p> <p>10 didn't tell Mr. Seery. I don't know what</p> <p>11 Mr. Dondero did with the information.</p> <p>12 Q. Okay.</p> <p>13 A. I did not have conversations with</p> <p>14 Mr. Seery.</p> <p>15 Q. Okay. Do you know who saw the</p> <p>16 presentations that you put together that didn't</p> <p>17 include the value of the related party notes?</p> <p>18 A. We're talking presentations -- these</p> <p>19 are -- these are Excel spreadsheets?</p> <p>20 Q. Uh-huh.</p> <p>21 A. I don't know who -- these were given</p> <p>22 to -- to Jim Dondero. I don't know what was</p> <p>23 done with them after that.</p> <p>24 Q. Okay. You also mentioned earlier</p> <p>25 that sometime during your tenure at Highland</p>	<p>Page 369</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 you knew of the practice of giving forgivable</p> <p>3 loans to executives.</p> <p>4 MR. MORRIS: Objection to the form</p> <p>5 of the question.</p> <p>6 Q. Can you -- can you tell me what you</p> <p>7 recall about that practice?</p> <p>8 MR. MORRIS: Objection to the form</p> <p>9 of the question.</p> <p>10 A. Yes, so there were -- there were --</p> <p>11 during my tenure at Highland, there were loans</p> <p>12 or -- given to employees that were later</p> <p>13 forgiven at a future date and time.</p> <p>14 Q. Okay. And when the loans were</p> <p>15 given, did the notes, to your recollection, say</p> <p>16 anything about the potential forgiveness term?</p> <p>17 MR. MORRIS: Objection to the form</p> <p>18 of the question.</p> <p>19 A. When you say "did the notes," did</p> <p>20 the promissory notes detail the forgiveness?</p> <p>21 Q. Yes.</p> <p>22 A. Not that I recall.</p> <p>23 Q. And until such time as whatever was</p> <p>24 to trigger the forgiveness occurred, were the</p> <p>25 notes bona fide notes as far as you were</p>

<p>Page 370</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 concerned?</p> <p>3 MR. MORRIS: Objection to the form</p> <p>4 of the question.</p> <p>5 A. Yes, similar to -- yes.</p> <p>6 Q. Okay. You were going to say similar</p> <p>7 to what?</p> <p>8 A. Mr. Morris earlier today showed</p> <p>9 notes of the financial statements about various</p> <p>10 affiliate loans. I -- I -- I do recall these</p> <p>11 notes because I -- at that time personally</p> <p>12 worked on the -- the financial statements of</p> <p>13 Highland. That was, you know, in my role as a</p> <p>14 corporate accountant.</p> <p>15 And there were -- those loans</p> <p>16 were -- to the partners were detailed in the</p> <p>17 notes to the financial statements, similar to</p> <p>18 what we went through earlier today in the prior</p> <p>19 testimony about what we saw with Highland</p> <p>20 and -- and -- and the -- and HCMFA.</p> <p>21 Q. Is it fair to say that on Highland's</p> <p>22 balance sheet there were any number of assets</p> <p>23 that the value of which could be affected by</p> <p>24 subsequent events?</p> <p>25 MR. MORRIS: Objection to the form</p>	<p>Page 371</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 of the question.</p> <p>3 A. Yes. I mean, yes, that -- there</p> <p>4 are. And that is -- yes.</p> <p>5 Q. Okay. And is it typical accounting</p> <p>6 practice that until there is some certainty</p> <p>7 about those potential future events, that asset</p> <p>8 value listed on -- on the books doesn't take</p> <p>9 into account those potential future events?</p> <p>10 MR. MORRIS: Objection to the form</p> <p>11 of the question.</p> <p>12 A. Yeah, if those -- yes. If -- if</p> <p>13 those future events, you know, at the time of</p> <p>14 issuance are not known or knowable, like I</p> <p>15 discussed earlier with, like, market practice,</p> <p>16 asset dislocation, or, you know, I mean, things</p> <p>17 like that, you -- I mean, it -- it could affect</p> <p>18 its fair value --</p> <p>19 Q. Okay.</p> <p>20 A. -- in the future.</p> <p>21 Q. And am I correct you wouldn't feel</p> <p>22 compelled to footnote in every possible change</p> <p>23 in -- in an asset when those possibilities are</p> <p>24 still remote?</p> <p>25 MR. MORRIS: Objection to the form</p>
<p>Page 372</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 of the question.</p> <p>3 A. The accounting standard is you have</p> <p>4 to estimate to the best -- you know, to -- to</p> <p>5 the best of your ability, the fair value of an</p> <p>6 asset as of the balance sheet date under --</p> <p>7 under GAAP.</p> <p>8 Q. Did -- strike that.</p> <p>9 Okay. Give me a minute. I'm</p> <p>10 close -- I'm close to done. Let me just go off</p> <p>11 and look at my notes for a second. So take two</p> <p>12 minutes.</p> <p>13 VIDEOGRAPHER: We're going off the</p> <p>14 record at 7:02 p.m.</p> <p>15 (Recess taken 7:02 p.m. to 7:03 p.m.)</p> <p>16 VIDEOGRAPHER: We are back on the</p> <p>17 record at 7:03 p.m.</p> <p>18 Q. Mr. Waterhouse, is it generally your</p> <p>19 understanding that people you work with now</p> <p>20 have been asking the debtor for full and</p> <p>21 unfettered access to their own former files?</p> <p>22 MR. MORRIS: Objection to the form</p> <p>23 of the question.</p> <p>24 A. Yes, I am -- I am generally aware.</p> <p>25 Q. Okay. And do you think you could</p>	<p>Page 373</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 have been better prepared for this deposition</p> <p>3 if the debtor had complied with those requests?</p> <p>4 MR. MORRIS: Objection to the form</p> <p>5 of the question.</p> <p>6 A. I -- I -- I most certainly -- yes.</p> <p>7 I mean, again, these are multiple years,</p> <p>8 multiple years ago, lots and lots of</p> <p>9 transactions.</p> <p>10 You know, we asked about NAV errors</p> <p>11 and, you know, things like that and these</p> <p>12 are -- it would make this process a lot more --</p> <p>13 a lot easier and if we had -- if we had access</p> <p>14 to that.</p> <p>15 Q. Okay. And has the debtor -- is the</p> <p>16 debtor suing you right now?</p> <p>17 A. Yes.</p> <p>18 Q. And is the debtor trying to renege</p> <p>19 on deals that it had previously made with you?</p> <p>20 MR. MORRIS: Objection to the form</p> <p>21 of the question.</p> <p>22 A. Sorry, I need to -- it is my</p> <p>23 understanding that the litigation trust is</p> <p>24 suing me. And not being a lawyer, I don't</p> <p>25 know -- is that the debtor?</p>

<p>Page 374</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Is that -- I don't know the</p> <p>3 relationship. So, again, I'm not the lawyers.</p> <p>4 I've said many times. But my understanding is</p> <p>5 the litigation trust is suing me. I could be</p> <p>6 wrong there. I don't know.</p> <p>7 Q. Okay. I understand.</p> <p>8 Someone with some connection to the</p> <p>9 Highland debtor has brought a claim against</p> <p>10 you; is that fair?</p> <p>11 MR. MORRIS: Objection to the form</p> <p>12 of the question.</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And is there also some motion</p> <p>15 practice in the bankruptcy where the debtor or</p> <p>16 someone associated with the debtor is</p> <p>17 attempting to undo something that was</p> <p>18 previously resolved with you?</p> <p>19 A. Yes.</p> <p>20 Q. And so in one action somebody is</p> <p>21 associated with the debtors trying to --</p> <p>22 threatening you with trying to take money from</p> <p>23 you, and then in the other -- and trying to --</p> <p>24 and in the other they are threatening not to</p> <p>25 pay you things that had previously been agreed;</p>	<p>Page 375</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 is that correct?</p> <p>3 MR. MORRIS: Objection to the form</p> <p>4 of the question.</p> <p>5 A. I want to be -- yes, I -- there</p> <p>6 is -- I'm being sued, again, on -- on something</p> <p>7 that was agreed to with Mr. Seery and myself.</p> <p>8 I don't -- I don't -- I don't own that claim.</p> <p>9 Q. Okay.</p> <p>10 A. To be transparent, I don't own that</p> <p>11 claim. So it is not my personal property.</p> <p>12 Q. Okay.</p> <p>13 A. And -- and being the nonlawyer, I</p> <p>14 don't know how I can get sued for something</p> <p>15 that I don't owe or, like, I don't own</p> <p>16 anything. I'm not the lawyer. But, I mean, if</p> <p>17 that is -- if I'm understanding the facts</p> <p>18 correctly.</p> <p>19 Q. Okay. And the lawsuit that was</p> <p>20 filed that names you, that was just filed</p> <p>21 this -- this past week; is that right?</p> <p>22 MS. DANDENEAU: Ms. Deitsch-Perez, I</p> <p>23 do want to interrupt at this point because</p> <p>24 just as I told Mr. Morris, that this is a</p> <p>25 deposition about the noticed litigation.</p>
<p>Page 376</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 I really don't want to go -- go</p> <p>3 afield --</p> <p>4 MS. DEITSCH-PEREZ: Yeah.</p> <p>5 MS. DANDENEAU: -- and open up a</p> <p>6 whole new line of inquiry about the lawsuit</p> <p>7 or the -- the motion and the bankruptcy</p> <p>8 court. We will be here all night.</p> <p>9 MS. DEITSCH-PEREZ: And I</p> <p>10 understand.</p> <p>11 Q. My -- my point is: Do you feel</p> <p>12 like -- like there is some effort by these</p> <p>13 parties related to the debtor to intimidate</p> <p>14 you -- not that you -- I'm not saying you are</p> <p>15 or you aren't.</p> <p>16 But do you feel like there is some</p> <p>17 effort to intimidate you and maybe an effort to</p> <p>18 deter you from being as prepared as you might</p> <p>19 be in this deposition?</p> <p>20 MR. MORRIS: Objection to the form</p> <p>21 of the question.</p> <p>22 A. I was -- I was surprised by the</p> <p>23 lawsuit, by me being named, because, again, I</p> <p>24 don't own the asset and things like that.</p> <p>25 Yeah, I just -- I want to move forward with my</p>	<p>Page 377</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 life at Skyview.</p> <p>3 MS. DEITSCH-PEREZ: Thank you.</p> <p>4 THE WITNESS: Thank you.</p> <p>5 FURTHER EXAMINATION</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. If I may, I just have a few</p> <p>8 questions.</p> <p>9 Mr. Waterhouse, we saw a number of</p> <p>10 documents that Mr. Rukavina put up on the</p> <p>11 screen where Ms. Hendrix would send you a</p> <p>12 schedule of payments that were due on behalf of</p> <p>13 certain Highland affiliates.</p> <p>14 Do you remember that?</p> <p>15 A. Yes.</p> <p>16 Q. And in each instance she asked for</p> <p>17 your approval to make the payments; is that</p> <p>18 right?</p> <p>19 A. Yes, she did.</p> <p>20 Q. And was that the -- was that the</p> <p>21 practice in the second half of 2020 whereby</p> <p>22 Ms. Hendrix would prepare a list of payments</p> <p>23 that were due on behalf of Highland associates</p> <p>24 and ask for approval?</p> <p>25 A. Yes.</p>

<p>Page 378</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And I think you said that there was</p> <p>3 a -- a --</p> <p>4 A. It was -- I think I testified to</p> <p>5 this earlier when we talked about procedures</p> <p>6 and policy, you know, again, I want to be</p> <p>7 informed of -- of -- of -- of -- of any</p> <p>8 payments that are going out. I want to be made</p> <p>9 aware of these payments, and that was just a</p> <p>10 general policy, not just for 2020.</p> <p>11 Q. Okay. So it went beyond 2020?</p> <p>12 A. Yes.</p> <p>13 Q. Is that right?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And the corporate accounting</p> <p>16 group would prepare a calendar that would set</p> <p>17 forth all of the payments that were anticipated</p> <p>18 in the -- in the three weeks ahead; is that</p> <p>19 right?</p> <p>20 A. I -- like I testified earlier, we</p> <p>21 had a corporate calendar that was set up, you</p> <p>22 know, to -- to provide reminders or, you know,</p> <p>23 of anything of any nature, whether it is</p> <p>24 payments or -- or financial statements or, you</p> <p>25 know, whatever it is, you know, to meet</p>	<p>Page 379</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 deadlines.</p> <p>3 I don't know how, as I testified</p> <p>4 earlier, how much they were using that</p> <p>5 calendar.</p> <p>6 Q. Okay. But -- but you did get notice</p> <p>7 and a request to approve the payments that were</p> <p>8 coming due on behalf of Highland's affiliates.</p> <p>9 Do I have that right?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 A. I mean, generally, yes. I mean, you</p> <p>12 know, as we saw with these emails, generally, I</p> <p>13 mean, did that encompass everything, no.</p> <p>14 Q. Okay. Do you know why the</p> <p>15 payment -- do you know why there was no payment</p> <p>16 made by NexPoint at the end of 2020?</p> <p>17 A. Yes. There was -- there was -- we</p> <p>18 talked about these agreements between the</p> <p>19 advisors and Highland, the shared services and</p> <p>20 the cost reimbursement agreement.</p> <p>21 And in late 2020, there were</p> <p>22 overpayments, large overpayments that had been</p> <p>23 made over the years on these agreements, and it</p> <p>24 was my understanding that the advisors were --</p> <p>25 were talking with -- like Jim Seery and others</p>
<p>Page 380</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 to offset any obligations that the advisors</p> <p>3 owed to Highland as offset to the overpayments</p> <p>4 on these agreements.</p> <p>5 Q. Okay. Did you participate in any of</p> <p>6 those conversations?</p> <p>7 A. I did not.</p> <p>8 Q. Okay. Do you know -- do you recall</p> <p>9 that the -- at the end of November, the debtor</p> <p>10 did notice to the advisors of their intent to</p> <p>11 terminate the shared services agreements?</p> <p>12 A. Like I testified earlier, there</p> <p>13 was -- the agreements weren't identical, from</p> <p>14 what I recall, and there is one that had a</p> <p>15 longer notice period, which I think had a</p> <p>16 60-day notice period. I don't recall which one</p> <p>17 that was, so not all of them were -- notice</p> <p>18 hadn't been given as of November 30th, for all</p> <p>19 of the agreements.</p> <p>20 Q. Upon the receipt of the -- the</p> <p>21 termination notices that you recall, do you</p> <p>22 know if the advisors decided at that point not</p> <p>23 to make any further payments of any kind to</p> <p>24 Highland?</p> <p>25 MR. RUKAVINA: Objection, form.</p>	<p>Page 381</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. No. The advisors -- the advisors</p> <p>3 had stopped making payments prior to that</p> <p>4 notice.</p> <p>5 Q. Okay. And how do you know that the</p> <p>6 advisors stopped making -- making payments</p> <p>7 prior to the notice?</p> <p>8 A. I had -- I had a conversation</p> <p>9 with -- with Jim Dondero.</p> <p>10 Q. And did Mr. Dondero tell you that</p> <p>11 the advisors would no longer make payments to</p> <p>12 Highland?</p> <p>13 MS. DEITSCH-PEREZ: Object to the</p> <p>14 form.</p> <p>15 A. Yes, he -- he -- again, he said</p> <p>16 they -- they -- the advisors have overpaid on</p> <p>17 these agreements, to not make any future</p> <p>18 payments, and that there needs to be offsets,</p> <p>19 and they're working on getting offsets to these</p> <p>20 overpayment.</p> <p>21 Q. Do you know if anybody ever</p> <p>22 instructed Highland's employees to make the</p> <p>23 payment that was due by NexPoint at the end of</p> <p>24 the year?</p> <p>25 A. Did anyone instruct Highland's</p>

<p>Page 382</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 employees to make that payment?</p> <p>3 Q. Correct.</p> <p>4 A. Anyone -- not that I'm aware.</p> <p>5 Q. Were any of Highland's employees</p> <p>6 authorized to make the payments on behalf of</p> <p>7 its affiliates -- withdrawn.</p> <p>8 Was any of Highland's employees</p> <p>9 authorized to effectuate the payment on behalf</p> <p>10 of NexPoint that was due at the end of the year</p> <p>11 without getting approval from either you or</p> <p>12 Mr. Dondero?</p> <p>13 A. They had the -- they had the ability</p> <p>14 to make the payment, but they didn't -- you</p> <p>15 know, that -- that payment needed to be</p> <p>16 approved.</p> <p>17 Q. Okay. And it needed to be approved</p> <p>18 by you or Mr. Dondero; is that right?</p> <p>19 A. I mean, I'm not going to make the</p> <p>20 unilateral decision.</p> <p>21 Q. Is that a decision that you</p> <p>22 understood had to be made by Mr. Dondero?</p> <p>23 A. Yes. Sitting back in December of</p> <p>24 2020, the -- that -- there was this off --</p> <p>25 offset negotiation that -- that was happening,</p>	<p>Page 383</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 so I mean, until those negotiations were</p> <p>3 resolved, you know, there wasn't any</p> <p>4 payments -- there weren't any payments.</p> <p>5 Q. And -- and there were no payments</p> <p>6 until the negotiations were resolved because</p> <p>7 that was the directive that you received from</p> <p>8 Mr. Dondero; correct?</p> <p>9 A. I don't think he said -- I mean, I</p> <p>10 think -- yeah, I mean -- I'm trying to recall</p> <p>11 the conversation. It was -- you know, there</p> <p>12 is -- there is these negotiations. There's --</p> <p>13 there needs to be these offsets. They're</p> <p>14 talking with the debtor. So, you know, until</p> <p>15 this is resolved, right, I mean, depending on</p> <p>16 how, whatever that resolution was, were we to</p> <p>17 take any action.</p> <p>18 Q. Okay. How about with respect to</p> <p>19 HCMS, did HCMS have a term payment due at the</p> <p>20 end of the year?</p> <p>21 A. Again, I don't -- I don't recall.</p> <p>22 Q. Okay. You discussed briefly two</p> <p>23 payments that were made in January of 2021, one</p> <p>24 on behalf of NexPoint, and one on behalf of</p> <p>25 HCMS. Do I have that right?</p>
<p>Page 384</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. No. The two payments I recall were</p> <p>3 NexPoint and HCRE.</p> <p>4 Q. Okay. And those two payments --</p> <p>5 thank you for the correction. And those two</p> <p>6 payments were made because Mr. Dondero</p> <p>7 authorized those payments to be made; correct?</p> <p>8 A. Yes.</p> <p>9 Q. And they hadn't been made before</p> <p>10 that because Mr. Dondero had not authorized</p> <p>11 them to be made?</p> <p>12 MS. DEITSCH-PEREZ: Object to the</p> <p>13 form.</p> <p>14 A. Yes, because of these negotiations.</p> <p>15 Q. Okay. Just a couple of more</p> <p>16 questions.</p> <p>17 Did anybody, to the best of your</p> <p>18 knowledge, on behalf of HCMFA, ever tell the</p> <p>19 SEC that HCMLP was responsible for the mistakes</p> <p>20 that were made on the TerreStar valuation?</p> <p>21 A. Did anyone from Highland on HCMFA's</p> <p>22 behalf tell the SEC that Highland -- that</p> <p>23 Highland was responsible for there -- I just</p> <p>24 want to make sure --</p> <p>25 Q. It was a little bit different, so</p>	<p>Page 385</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 let me try again.</p> <p>3 A. These are very long questions, John.</p> <p>4 I'm not trying to be --</p> <p>5 Q. That is good. Do you know whether</p> <p>6 anybody -- do you know whether anybody on</p> <p>7 behalf of HCMS -- HCMFA ever told the SEC that</p> <p>8 Highland was the responsible party for the</p> <p>9 TerreStar valuation error?</p> <p>10 A. Not that I'm aware.</p> <p>11 Q. Okay. Did anybody on behalf of</p> <p>12 the -- on behalf of HCMFA ever tell the retail</p> <p>13 board that Highland was responsible for the</p> <p>14 TerreStar valuation error?</p> <p>15 A. Not that I'm aware.</p> <p>16 Q. Do you know if HCMFA made an</p> <p>17 insurance claim with respect to the damages</p> <p>18 that were incurred in relation to the TerreStar</p> <p>19 valuation error?</p> <p>20 A. Yes.</p> <p>21 Q. And do you know why they made that</p> <p>22 insurance claim?</p> <p>23 A. Because there was an error. I</p> <p>24 mean --</p> <p>25 Q. Was the insured's claim made -- was</p>

<p>Page 386</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 the insurance claim made under HCMFA's policy?</p> <p>3 A. Yes.</p> <p>4 Q. Did HCMFA at any time prior to the</p> <p>5 petition date -- withdrawn.</p> <p>6 You were asked a couple of questions</p> <p>7 where -- where you said that Mr. Dondero told</p> <p>8 you that he was ascribing zero value to the</p> <p>9 notes as part of a pot plan because he believed</p> <p>10 that the notes were part of executive</p> <p>11 compensation.</p> <p>12 Do I have that right?</p> <p>13 MS. DEITSCH-PEREZ: Object to the</p> <p>14 form.</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Have you ever heard that</p> <p>17 before the time that Mr. Dondero told you that</p> <p>18 in the conversation about the pot plan?</p> <p>19 A. Had I heard that prior to my</p> <p>20 conversation with Mr. Dondero?</p> <p>21 Q. Yes.</p> <p>22 A. No, I had not heard that prior.</p> <p>23 Q. Okay. And that was in the context</p> <p>24 of his formulation of the settlement proposal;</p> <p>25 is that right?</p>	<p>Page 387</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I mean, generally, yes. You know,</p> <p>3 we were asked to provide asset values, right,</p> <p>4 and he was having settlement discussions.</p> <p>5 Again, I don't know who those went to</p> <p>6 ultimately. I don't recall.</p> <p>7 MR. MORRIS: I have no further</p> <p>8 questions. Thank you very much for your</p> <p>9 patience. I apologize for the late hour.</p> <p>10 MS. DEITSCH-PEREZ: John, you stay</p> <p>11 on about your email when --</p> <p>12 MR. RUKAVINA: Hold on, I'm not</p> <p>13 done.</p> <p>14 MS. DEITSCH-PEREZ: Oh, okay. Davor</p> <p>15 still has questions. Sorry. I was going</p> <p>16 to say both John and Davor, could you stay</p> <p>17 on afterwards just to talk about the</p> <p>18 requests.</p> <p>19 FURTHER EXAMINATION</p> <p>20 BY MR. RUKAVINA:</p> <p>21 Q. Mr. Waterhouse, you were just now</p> <p>22 testifying about a discussion you had with</p> <p>23 Mr. Dondero where he said something like no</p> <p>24 more payments.</p> <p>25 Do you remember that testimony?</p>
<p>Page 388</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And was that late November or</p> <p>4 early December of 2020?</p> <p>5 A. It was, I would say, first or second</p> <p>6 week of November.</p> <p>7 Q. Okay. Do you recall whether --</p> <p>8 whenever you had that discussion, whether</p> <p>9 Mr. Dondero had already been fired by the</p> <p>10 debtor?</p> <p>11 A. Yes, I -- I believe he was not an</p> <p>12 employee of the debtor anymore at that time.</p> <p>13 Q. And when you were discussing this</p> <p>14 with Mr. Dondero and he said no more payments,</p> <p>15 you were discussing the two shared services</p> <p>16 agreements and employee reimbursement</p> <p>17 agreements we testified -- you testified about</p> <p>18 before; is that correct?</p> <p>19 MR. MORRIS: Objection to the form</p> <p>20 of the question.</p> <p>21 A. That is correct.</p> <p>22 Q. And had your office or you -- and we</p> <p>23 will talk at a future deposition about the</p> <p>24 administrative claim.</p> <p>25 But had -- by that time that you</p>	<p>Page 389</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 talked to Mr. Dondero, had your office or you</p> <p>3 done any estimate of what the alleged</p> <p>4 overpayments were?</p> <p>5 MR. MORRIS: Objection to the form</p> <p>6 of the question.</p> <p>7 A. Yes, we had -- there was a -- there</p> <p>8 was a detailed analysis that was put together</p> <p>9 by David Klos at the time.</p> <p>10 Q. And do you recall just generally</p> <p>11 what the total amount for both advisors of the</p> <p>12 overpayments was?</p> <p>13 A. It was in excess of \$10 million.</p> <p>14 Q. Was it in excess of \$14 million?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 A. I -- I remember it was an</p> <p>18 eight-figure number. I don't remember</p> <p>19 specifically.</p> <p>20 Q. Okay. And did you convey that</p> <p>21 number to Mr. Dondero when you had that</p> <p>22 conversation?</p> <p>23 A. Yes.</p> <p>24 Q. What was his reaction?</p> <p>25 A. I mean, he wasn't happy.</p>

<p style="text-align: right;">Page 390</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Is it fair to say he was upset?</p> <p>3 A. Yes.</p> <p>4 Q. Did Mr. Dondero ever expressly tell</p> <p>5 you to not have NexPoint make the required</p> <p>6 December 31, 2020, payment?</p> <p>7 A. Yes, I recall him saying don't make</p> <p>8 the payment because it was being negotiated, as</p> <p>9 I discussed with Mr. Morris, this offset</p> <p>10 concept. So there were obligations due by the</p> <p>11 advisors to Highland, they should be offset</p> <p>12 that -- you know, those obligations should be</p> <p>13 offset by this -- by this overpayment.</p> <p>14 Q. And when did he tell you that?</p> <p>15 A. I would say -- I would say around --</p> <p>16 probably December -- December-ish.</p> <p>17 Q. Early December, late December?</p> <p>18 A. I don't recall with as much</p> <p>19 specificity as -- as -- as -- as stopping the</p> <p>20 shared services payments, because we had</p> <p>21 actually made one shared services payment in</p> <p>22 November. So that is why I need to remember</p> <p>23 that one more clearly. I don't remember where</p> <p>24 exactly in December that conversation occurred.</p> <p>25 Q. Did Mr. Dondero expressly use the</p>	<p style="text-align: right;">Page 391</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 word "NexPoint" when he was saying don't make</p> <p>3 these payments?</p> <p>4 MR. MORRIS: Objection to the form</p> <p>5 of the question, asked and answered.</p> <p>6 A. Yeah, we were -- we were discussing</p> <p>7 advisor obligations. So it was -- you know, it</p> <p>8 was just obligations from the advisors.</p> <p>9 And -- and he specifically talked</p> <p>10 about the NexPoint payment as well.</p> <p>11 Q. Okay. And it is your testimony that</p> <p>12 he expressly told you not to make that NexPoint</p> <p>13 December 31 payment?</p> <p>14 MR. MORRIS: Objection, asked and</p> <p>15 answered twice.</p> <p>16 A. Yes, he -- he did, during that</p> <p>17 conversation.</p> <p>18 Q. And did you ever follow up with him</p> <p>19 after that about whether NexPoint should or</p> <p>20 shouldn't make that payment?</p> <p>21 A. I did not.</p> <p>22 Q. Did you ever, on or about</p> <p>23 December 31, 2020, remind him and say, hey,</p> <p>24 this payment is due, what shall I -- what</p> <p>25 should I do?</p>
<p style="text-align: right;">Page 392</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I did not.</p> <p>3 Q. So sitting here today, you -- you</p> <p>4 remember distinctly that Dondero in December of</p> <p>5 2020 expressly told you not to have NexPoint</p> <p>6 make that payment?</p> <p>7 MR. MORRIS: Objection, asked and</p> <p>8 answered three times.</p> <p>9 A. Yes.</p> <p>10 Q. Can you say categorically it wasn't</p> <p>11 just some general discussion where he told you</p> <p>12 not to make payments?</p> <p>13 MR. MORRIS: Objection, asked and</p> <p>14 answer four times.</p> <p>15 MR. HORN: Four times now. Go for</p> <p>16 five.</p> <p>17 A. Yes.</p> <p>18 Q. Did you tell Mr. Seery that?</p> <p>19 A. I don't believe I did. I don't</p> <p>20 recall.</p> <p>21 Q. And was this an in-person discussion</p> <p>22 or telephone or email? Do you remember?</p> <p>23 A. This was a phone -- a phone</p> <p>24 conversation.</p> <p>25 Q. Okay. Would you have a record of --</p>	<p style="text-align: right;">Page 393</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 on your cell phone of when that conversation</p> <p>3 might have taken place?</p> <p>4 I'm sorry, strike that.</p> <p>5 Was that by cell phone?</p> <p>6 A. I believe -- yes, because we -- I</p> <p>7 was at home. I mean, I don't have a landline.</p> <p>8 All I have is my cell phone.</p> <p>9 Q. Do you know whether your cell phone</p> <p>10 still has records of conversations from</p> <p>11 December 2020 on it?</p> <p>12 A. My call log doesn't go back that</p> <p>13 far.</p> <p>14 Q. Okay. Thank you.</p> <p>15 MR. RUKAVINA: I will pass the</p> <p>16 witness.</p> <p>17 MS. DEITSCH-PEREZ: Just a couple</p> <p>18 quick questions.</p> <p>19 FURTHER EXAMINATION</p> <p>20 BY MS. DEITSCH-PEREZ:</p> <p>21 Q. With respect to HCRE and HCMS, am I</p> <p>22 correct there was -- there was no direction not</p> <p>23 to pay those loan payments?</p> <p>24 MR. MORRIS: Objection to the form</p> <p>25 of the question.</p>

<p>Page 394</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes, I don't recall having</p> <p>3 conversations about, you know, those -- those</p> <p>4 entities.</p> <p>5 Q. And, in fact, what was the tone that</p> <p>6 Mr. Dondero had when he talked to you about the</p> <p>7 fact that HCRE and HCMS payments hadn't been</p> <p>8 made when he found out that they hadn't been</p> <p>9 paid?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 MR. MORRIS: Objection to form.</p> <p>12 Q. What was the tone he took with you?</p> <p>13 A. Oh, it was -- it was -- it was -- it</p> <p>14 was very negative. I mean, I think he cursed</p> <p>15 at me and he doesn't usually curse.</p> <p>16 Q. Okay. And in your mind, is that</p> <p>17 consistent with the fact that he was surprised</p> <p>18 that those payments hadn't been made?</p> <p>19 MR. MORRIS: Objection to the form</p> <p>20 of the question.</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Thank you.</p> <p>23 MR. MORRIS: I have nothing further.</p> <p>24 Thank you so much, Mr. Waterhouse.</p> <p>25 MR. HORN: I have no questions.</p>	<p>Page 395</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Thank you, Mr. Waterhouse. We appreciate</p> <p>3 your time. I am logging off the discussion</p> <p>4 and I will talk to y'all tomorrow.</p> <p>5 MR. MORRIS: Super.</p> <p>6 VIDEOGRAPHER: If there are no</p> <p>7 further questions, this ends the</p> <p>8 deposition -- excuse me. This ends the</p> <p>9 deposition, and we are going off the record</p> <p>10 at 7:30 p.m.</p> <p>11 (Deposition concluded at 7:30 p.m.)</p> <p>12</p> <p>13 _____</p> <p>14 FRANK WATERHOUSE</p> <p>15</p> <p>16 Subscribed and sworn to before me</p> <p>17 this day of 2021.</p> <p>18</p> <p>19 _____</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>Page 396</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 C E R T I F I C A T E</p> <p>3</p> <p>4 I, SUSAN S. KLINGER, a certified shorthand</p> <p>5 reporter within and for the State of Texas, do</p> <p>6 hereby certify:</p> <p>7 That FRANK WATERHOUSE, the witness whose</p> <p>8 deposition is hereinbefore set forth, was duly</p> <p>9 sworn by me and that such deposition is a true</p> <p>10 record of the testimony given by such witness.</p> <p>11 I further certify that I am not related to</p> <p>12 any of the parties to this action by blood or</p> <p>13 marriage; and that I am in no way interested in</p> <p>14 the outcome of this matter.</p> <p>15 IN WITNESS WHEREOF, I have hereunto set my</p> <p>16 hand this 19th of October, 2021.</p> <p>17</p> <p>18 _____</p> <p>19 Susan S. Klinger, RMR-CRR, CSR</p> <p>20 Texas CSR# 6531</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 397</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 NAME OF CASE: In re: Highland Capital</p> <p>3 DATE OF DEPOSITION: October 19, 2021</p> <p>4 NAME OF WITNESS: Frank Waterhouse</p> <p>5 Reason Codes:</p> <p>6 1. To clarify the record.</p> <p>7 2. To conform to the facts.</p> <p>8 3. To correct transcription errors.</p> <p>9 Page____Line____Reason_____</p> <p>10 From_____to_____</p> <p>11 Page____Line____Reason_____</p> <p>12 From_____to_____</p> <p>13 Page____Line____Reason_____</p> <p>14 From_____to_____</p> <p>15 Page____Line____Reason_____</p> <p>16 From_____to_____</p> <p>17 Page____Line____Reason_____</p> <p>18 From_____to_____</p> <p>19 Page____Line____Reason_____</p> <p>20 From_____to_____</p> <p>21 Page____Line____Reason_____</p> <p>22 From_____to_____</p> <p>23 Page____Line____Reason_____</p> <p>24 From_____to_____</p> <p>25</p>

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